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THE
CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



ANNUAL REPORT

1992-93

June 1993

FOR THE FISCAL YEAR ENDING
MARCH 31, 1993

Annual Report

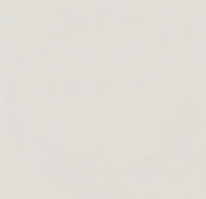
For the Fiscal Year Ending
March 31, 1993



**The Canadian
International
Trade Tribunal**

Annual Report

1992-1993



Minister of Supply and Services Canada

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CHAIRMAN

PRÉSIDENT

June 16, 1993

The Honourable Don Mazankowski, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6


Dear Mr. Mazankowski:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 1993.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "John C. Coleman".

John C. Coleman



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GLOSSARY OF ACRONYMS

AD/CVD	Anti-dumping or Countervailing Duty
ADT	Anti-dumping Tribunal
CARIBCAN	Arrangement between Canada and the Commonwealth Caribbean Countries
CIT	Canadian Import Tribunal
CITT Act	<i>Canadian International Trade Tribunal Act</i>
CUSTA	<i>Canada-United States Trade Agreement</i>
FST	Federal Sales Tax
FTA	<i>Canada-United States Free Trade Agreement</i>
GATT	<i>General Agreement on Tariffs and Trade</i>
GPT	General Preferential Tariff
GST	Goods and Services Tax
NAFTA	<i>North American Free Trade Agreement</i>
PRB	Procurement Review Board
SIMA	<i>Special Import Measures Act</i>

MESSAGE FROM THE CHAIRMAN

This annual report reflects another busy and productive year for the Canadian International Trade Tribunal.

Our overall caseload of anti-dumping and countervailing duty inquiries, appeals from customs and excise decisions of the Department of National Revenue, and trade inquiries referred to us by the government surpassed that of any previous year. Because of government expenditure restraints, we handled this work with fewer resources. We did so with no loss in quality or timeliness, but at the cost of much increased pressure on members and staff.

We have been able to meet these challenges because we have developed a clear sense of mission and a strong corporate culture. We are firmly committed to serving the public fairly, promptly and professionally. Members and staff have a deep sense of pride and ownership in this institution. We recognize that good internal management and harmonious working relationships allow us to meet the Tribunal's service objectives.

Here are a few of the highlights of the Tribunal's operations in the past year, as I see them.

- In its anti-dumping and countervailing duty work, under SIMA, the Tribunal handled the greatest number of new cases - as opposed to reviews of previous findings - since its inception in late 1988. In half of these cases, the Tribunal found material injury and confirmed the imposition of anti-dumping duties. In the remainder,

the cases were closed, and provisional anti-dumping duties were refunded.

- In its SIMA work, the Tribunal has been developing new case management procedures designed to make its public hearings shorter and more efficient. These involve early pre-hearing conferences to clarify questions of substance, to dispose of procedural issues and to establish a schedule of hearings. They also involve more active direction of the hearings by the panel of members hearing the case.
- Also under the heading of SIMA, the Tribunal staff has been extending its research efforts, especially through the introduction of new questionnaires and, on the basis of the information so obtained, through the production of pricing studies to supplement its regular staff reports.
- More of the Tribunal's SIMA decisions involving imports from the United States are being made subject to judicial review by binational panels under the FTA. During 1992-93, the Tribunal's injury finding concerning the dumping of U.S. beer in British Columbia was remanded before being affirmed by a binational panel. Binational panel remands of Tribunal decisions are challenging us to document fully and more quantitatively the causal link between dumping or subsidizing, on the one hand, and material injury to Canadian producers, on the other.
- In its appeal work, the Tribunal held hearings and rendered decisions on a significantly increased number of cases last year. This reflected the systematic application of the 1991 *Canadian International Trade Tribunal Rules* which set deadlines for the submission of briefs and the holding of hearings

and which encourage parties to make use of file hearings or to withdraw appeals if they are not serious about pursuing them. Despite this increased output, the Tribunal received an even greater influx of new appeals, relating particularly to tariff classification and SIMA decisions of the Department of National Revenue.

- In July 1992, the Tribunal received its first serious request from a Canadian industry to conduct an import safeguard inquiry under section 22 of the CITT Act. The request was made by Algoma Steel Inc. with respect to imports of wide flange steel shapes. The Tribunal accepted a properly documented complaint from Algoma Steel Inc., but concluded that the complaint did not give the Tribunal sufficient grounds to undertake a full import safeguard inquiry.
- Trade and tariff references from the government were a major activity for the Tribunal in 1992-93. The Tribunal's report on the allocation of import quotas was tabled on November 30, 1992, and is being studied by the government. It contains not only recommendations to improve the allocation of import quotas for supply managed products in the dairy and poultry industries but also a good deal of useful information on the functioning of those industries under supply management. Also in November 1992, the Tribunal was asked to undertake a year-long inquiry into the competitiveness of the Canadian cattle and beef industries in the North American and world markets.
- After over four years of operations, the Tribunal has begun the work of revising its rules of procedure. Our aim is to reflect recent improvements in the

management of SIMA and appeal cases. We want to take further steps to ensure the prompt filing of submissions by parties, to shorten our public hearings, and, generally, to reduce costs for parties and for the Tribunal.

As is the case for any organization, the Tribunal experienced a number of changes and passages in the past year.

In August 1992, we said farewell to Robert Martin, the first Secretary of the Tribunal, who retired early after completing 30 years of public service. Bob was one of the great builders of the Tribunal. We greatly miss his vast knowledge of trade, his amazing energy and his special sense of humour. Bob has a worthy successor in Michel Granger, who was promoted from Deputy Secretary to Secretary, effective September 1, 1992.

In December 1992, we welcomed to the Tribunal our tenth member, Lise Bergeron.

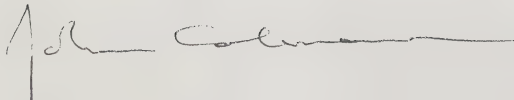
Last autumn, we learned that building renovations would compel the Tribunal to leave its present address. In September 1993, we will move next door to the Standard Life Centre, at 333 Laurier Avenue West. We expect to share conference, hearing and library facilities with a number of other federal boards and tribunals moving to the same building.

In early June 1993, when this annual report was being completed, two pieces of legislation, which would have a significant effect on the Tribunal's role and workload, were proceeding through Parliament. One was the bill to implement NAFTA. The other, Bill C-93, provided for the merger of the Procurement Review Board with the Tribunal, to create the International Trade and Procurement Tribunal. This bill was defeated in the Senate on June 10, 1993.

With our partner tribunal, the PRB, we have done a lot of work to pool our resources and get ready for the passage of Bill C-93. We hope that the merger will take place eventually.

My final word is for the members of the Tribunal and its staff. In less than

five years, we have created one of the most professional, service-oriented and collegial of all the federal boards and tribunals. I am sure that the hard work, imagination and good humour of this talented and multi-disciplinary group will allow it to respond creatively to many new challenges in the years ahead.



John C. Coleman

MEMBERS OF THE CANADIAN INTERNATIONAL TRADE TRIBUNAL



Chairman:



Vice-Chairman:

Kathleen E. Macmillan is from Ottawa, Ontario. She received her B.A. in economics from Queen's University and her M.A. at the University of Alberta. As an economist and policy analyst, she has published widely for the Economic Council of Canada (ECC), the Canada West Foundation and the C.D. Howe Institute.

John C. Coleman is from Montréal, Quebec. He studied history at the University of Toronto and Carleton University. He came to the Tribunal from the Department of Finance, where he was Assistant Deputy Minister, International Trade and Finance. He also served in Washington with the Canadian Executive Director to the International Monetary Fund (IMF) and in Paris with the Canadian delegation to the Organization for Economic Co-operation and Development (OECD).



Vice-Chairman:

Arthur B. Trudeau is from Ile des Chênes, Manitoba. He obtained a B.A. and B.Com at the University of Manitoba and an M.A. at Carleton University. Prior to joining the federal government in 1971, he had held managerial positions in accounting and finance with DuPont of Canada Ltd. He was the Secretary of the Anti-dumping Tribunal and of its successor, the Canadian Import Tribunal, then became a member of the CIT.



Sidney A. Fraleigh is from Forest, Ontario, and is a graduate of the University of Guelph. He is past Chairman of both the Ontario Pork Producers Marketing Board and the Canadian Pork Council. Mr. Fraleigh was Member of Parliament for Lambton-Middlesex in the parliaments elected in 1979 and 1984.



W. Roy Hines is from Reserve, Cape Breton Island, Nova Scotia, and studied commerce and economics at St. Francis Xavier University and the University of Ottawa. As a public servant for over 30 years, he has worked for the departments of National Revenue and Finance, the Ministry of State for Economic Development (MSERD), the Department of Regional Industrial Expansion (DRIE) and the Office for Multilateral Trade Negotiations (OMTN). While with the Department of Finance, he was one of the architects of SIMA.



Michèle Blouin is from Québec City, Quebec, and was admitted to the Barreau du Québec in 1975 following legal studies at the Université de Montréal. She was previously senior associate of the firm Blouin, Gagnon and a legal adviser to the Sectoral Advisory Group on International Trade (SAGIT) on the arts and culture.



Charles A. Gracey is from Woodstock, Ontario. He is a professional agrologist who specialized in animal science and served for 20 years as the Executive Vice-President of the Canadian Cattlemen's Association (CCA). Previously, he worked for the Ontario Ministry of Agriculture and Food, and taught at the Kemptville Agricultural College.



The Honourable Robert C. Coates, Q.C., is from Amherst, Nova Scotia. Mr. Coates served as Member of Parliament for Cumberland-Colchester from 1957 to 1988. He was National President of the Progressive Conservative Association of Canada from 1977 to 1981. He was Minister of National Defence from September 1984 to February 1985. Mr. Coates is a graduate of Mount Allison University (B.A.) and Dalhousie Law School (L.L.B.). He was appointed Queen's Counsel in 1980.



Desmond Hallissey is from Québec City, Quebec. He obtained his engineering certificate from St. Francis Xavier University and graduated from the Université de Montréal with a B.Sc. in civil engineering. He worked in different engineering offices and, in 1963, founded his own consulting engineering firm, which he sold in 1990. He was Director of Telesat Canada from 1984 until his appointment to the Tribunal.



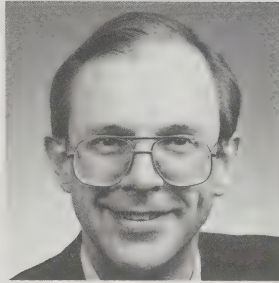
Lise Bergeron is from Montréal, Quebec. She obtained an M.A. in sociology from the Université de Montréal and has worked towards her doctoral degree. Ms. Bergeron also obtained an M.A. in agricultural economics from the University of London in England. Previously, she was a professor with the Department of Social Sciences at the Cégep in Saint-Jérôme. From 1981 to 1983, she was employed by the Coopérative fédérée du Québec as the research and organizational communications coordinator for the dairy industry division. From 1983 to 1986, Ms. Bergeron was Director of the Quebec Pork Producers Marketing Board, an affiliation of the Union des producteurs agricoles du Québec. From 1986 to 1991, she was Vice-President of the National Farm Products Marketing Council (NFPMC) in Ottawa. Ms. Bergeron was appointed temporary member of the Tribunal on December 14, 1992.

SENIOR OFFICERS



Secretary:

Michel P. Granger is from Hull, Quebec. He received a B.A., a B.L.S. and an M.B.A. from the University of Ottawa. He joined the Tribunal in January 1990 as Deputy Secretary and Chief of Administration. Prior to his appointment, he worked for the Department of Communications where he occupied various managerial positions. From 1971 to 1983, he worked as a professional librarian in various federal departments. He was appointed Secretary of the Tribunal on September 1, 1992.



Executive Director of Research:

Ronald W. Erdmann is from Toronto, Ontario. He joined the Tribunal in January 1989 after previous experience at the departments of Energy, Mines and Resources (EMR) and Finance. He completed a 15-year career at EMR as Director General of the Fiscal and Financial Analysis Branch, where he was deeply involved with energy megaproject negotiations, ongoing modifications to the Canadian petroleum tax regime, and energy supply/demand modelling and projections. He also served as a member of the board of directors of the Canadian Energy Research Institute (CERI) in Calgary and the Petroleum Compensation Board. Mr. Erdmann has a B.Com and an M.A. in economics from the University of Toronto.



General Counsel:

Debra P. Steger is from Oliver, British Columbia. She received her LL.M. from the University of Michigan Law School, her LL.B. from the University of Victoria Faculty of Law and her B.A. from the University of British Columbia. She has practiced international trade and competition law with Fraser & Beatty in Ottawa and previously with McCarthy & McCarthy in Toronto. Most recently, Ms. Steger was in the Office for Multilateral Trade Negotiations (OMTN), External Affairs and International Trade Canada (EAITC), working on the Uruguay Round negotiations within GATT. She is an adjunct professor of law at the University of Ottawa and has published and lectured widely on international trade law and policy.

CHAPTER I

TRIBUNAL HIGHLIGHTS 1992-93

Dumping and Subsidizing Injury Inquiries

a) New Cases

- The Canadian International Trade Tribunal (the Tribunal) issued eight findings on whether goods, which the Department of National Revenue (Revenue Canada) had found to be dumped or subsidized, were causing material injury to Canadian production of like goods.
- In four of the cases, the Tribunal found injury. The result of a finding of injury is the immediate imposition of anti-dumping duties sufficient to eliminate the margin of dumping found by Revenue Canada.
- In the other four cases, the Tribunal found no injury. When such a decision is rendered, the case is at once terminated and Revenue Canada refunds the provisional duties that it collected from importers.

b) Reviews of Existing Findings

- The Tribunal issued six decisions on reviews of earlier anti-dumping and/or countervailing duty findings. SIMA provides that anti-dumping and/or countervailing duty findings expire in five years unless the Tribunal, before that time, initiates a review and subsequently decides to continue the finding.
- In three of the cases, the Tribunal decided to continue the findings.
- In the other three cases, the Tribunal rescinded the findings, thereby ending the

collection of anti-dumping and/or countervailing duties on the subject imports.

c) Public Interest Consideration

- During the inquiry on dumped imports of bicycles and frames into Canada from Taiwan and the People's Republic of China (NQ-92-002), the Tribunal received submissions from interested parties on the question of public interest.
- The Tribunal was of the opinion that the public interest did not require any reduction of the anti-dumping duties from their full amount on imports from Taiwan and the People's Republic of China. Therefore, no report was issued to the Minister of Finance.

Taxpayers' Appeals from Revenue Canada Customs and Excise Decisions

- The Tribunal issued decisions on 129 appeals by taxpayers from Revenue Canada customs and excise decisions, of which 62 were allowed, in whole or in part, and 67 were dismissed.
- Appeals concerning the GST, which replaced the FST on January 1, 1991, are being heard by the Tax Court of Canada.
- After the Tribunal disposes of the remaining FST appeals, including those on FST refunds relating to the introduction of the GST, its appeal work will involve mainly Revenue Canada decisions under the *Customs Act* and SIMA. The volume of those appeals has been rising substantially.
- The output generated by the special "Appeals Unit" set up to deal with the remaining FST appeals has met the Tribunal's expectations. The number of decisions rendered in fiscal year 1992-93

increased to 129 from 88 the previous fiscal year. The number of cases heard also increased significantly, from 96 to 183.

Trade and Tariff "References"

- Under the CITT Act, the Governor in Council or the Minister of Finance may refer to the Tribunal for inquiry and advice any matter affecting Canada's trade and tariffs. The Tribunal worked on two large references during the fiscal year.

a) An Inquiry Into the Allocation of Import Quotas

- In August 1991, the Tribunal was asked by the government to conduct an inquiry in order to provide recommendations on: (1) the optimum method to allocate import quotas for supply managed poultry and dairy products; and (2) principles that should generally guide any import quota allocation.
- The government reference was consistent with recommendations from the National Poultry Task Force and the National Dairy Task Force that current methods of import quota allocation in respect of poultry and dairy products be reviewed.
- The Tribunal submitted its report on October 13, 1992. It recommended alternatives to the current import quota allocation methods for many agricultural products currently subject to import controls. It also provided recommendations on principles that should guide any import quota allocation.

b) An Inquiry Into the Competitiveness of the Canadian Cattle and Beef Industries

- In November 1992, the Tribunal was asked by the government to conduct an inquiry into the competitiveness of the Canadian

cattle and beef industries in the North American and world markets.

- The Tribunal has mounted a large research program with the help of its staff and consultants. It held public hearings in January and March 1993 to seek advice from interested parties on competitiveness issues facing the Canadian cattle and beef industries and on the conduct of the inquiry. Further hearings were planned to be held in Ottawa, Ontario, in April and September 1993. The September hearing will enable interested parties to comment on the research work of the Tribunal staff and its consultants.

- The Tribunal must report to the government by the end of 1993.

Binational Panel Reviews

- In 1991, the Tribunal's decision involving certain beer originating in or exported from the United States (NQ-91-002) was the subject of a binational panel review under Chapter Nineteen of the FTA. The Tribunal, on a remand from the panel, affirmed its original decision.
- On February 8, 1993, the panel issued a second decision which affirmed the determination on remand.
- At the end of the fiscal year, two findings of the Tribunal (machine tufted carpeting from the United States — NQ-91-006 and gypsum board from the United States — NQ-92-004) were being reviewed by binational panels.

Members and Staff

- Ms. Lise Bergeron was appointed temporary member of the Tribunal on December 14, 1992.
- On March 31, 1993, the Tribunal had on strength 10 members and a staff of 89.

TABLE 1.1

TRIBUNAL'S CASELOAD IN FISCAL YEAR 1992-93

	Cases Brought Forward from Previous Fiscal Year	Cases Received or Initiated in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn	Cases Outstanding (March 31, 1993)	Hearings Held (Days)	Interested Parties	Witnesses	Plant Visits
SIMA ACTIVITIES										
Injury Inquiries	2	9	11	8	-	3	6 (49)	121	197	10
Injury Reviews	3	3	6	6	-	-	6 (7)	23	26	4
Notices of Expiry	1	2	3	2	-	1	N/A	N/A	N/A	N/A
References	-	6	6	4	-	2	N/A	N/A	N/A	N/A
Public Interest Consideration	-	1	1	1	-	-	N/A	28	N/A	N/A
Request for Review of Finding or Order	-	1	1	-	-	1	N/A	N/A	N/A	N/A
Determination on Remand	-	1	1	1	-	-	N/A	N/A	N/A	N/A
APPEALS										
Customs Act	118	172	290	38	73	179	47 (45)	48	62	N/A
Excise Tax Act	508	196	704	84 ¹	69	551	126 ¹ (112)	130	115	N/A
SIMA	11	19	30	7	8	15	9 (9)	9	26	N/A
Softwood Lumber Products Export Charge Act	-	1	1	-	-	1	1 (1)	1	2	N/A
Total	637	388	1,025	129	150	746	183 (167)	188	205	N/A
ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES										
Economic, Trade and Tariff-Related Matters	1	1	2	1	-	1	3 (12)	121	67	15
Global Safeguard Inquiry	-	1	1	1	-	-	N/A	N/A	N/A	N/A

1. Three of those appeals also related to the *Softwood Lumber Products Export Charge Act*.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system.

It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner. It is not part of any government department or agency although it reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the CITT Act and its Regulations, the *Canadian International Trade Tribunal Rules* (Tribunal's Rules of Procedure), SIMA, the *Customs Act* and the *Excise Tax Act*. Appendix A highlights the specific powers assigned to the Tribunal by this legislation.

Membership

The Tribunal is composed of nine full-time members and one temporary member, including a Chairman and two Vice-Chairmen, who are appointed by the Governor in Council for a term of up to five years. A maximum of five additional members may be temporarily appointed. The Chairman is the Chief Executive Officer responsible for the assignment of members and for managing the work of the Tribunal. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently 10 in number, are supported by a permanent staff

of 89 people. Its principal officers are the Executive Director, Research, responsible for economic and financial analysis of firms and industries, and for other fact finding required for Tribunal inquiries; the Secretary, responsible for administration, relations with the public, government departments and other governments, and the court registrar functions of the Tribunal; and the General Counsel, responsible for the provision of legal services to the Tribunal.

Functions

The Tribunal has both judicial and advisory functions, and a number of its programs fall into each category. Table 2.1 summarizes the spectrum of responsibilities.

Method of Operations

In virtually all of its programs, the Tribunal conducts hearings that are open to the public. These are normally held in Ottawa, Ontario, the location of the Tribunal's offices, although hearings are also held elsewhere in Canada. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, conducted by any three members or more, should be carried out as "informally and expeditiously" as possible. The Tribunal has the power to subpoena witnesses and require parties to submit documents, even when these are commercially confidential. The CITT Act contains provisions that strictly control access to confidential documents.

The adjudicative decisions of the Tribunal are final, but may be reviewed or appealed, as appropriate, to the Federal Court of Canada and, ultimately, to the Supreme Court of Canada, or to a binational panel under the FTA, in the case of a decision affecting U.S. interests. Governments may appeal decisions to a GATT dispute settlement panel.

TABLE 2.1

TRIBUNAL'S JUDICIAL AND ADVISORY FUNCTIONS

JUDICIAL

- **DUMPING AND SUBSIDIZING INJURY INQUIRIES**
 - Material Injury from Dumped or Subsidized Exports to Canada
 - Reviews of Findings of Material Injury
 - References on Reasonable Indication of Material Injury and Rulings on Who is Importer
 - Advice on Public Interest Considerations Arising Out of Dumping or Subsidizing Injury Inquiries
- **APPEALS FROM REVENUE CANADA DECISIONS**
 - Tariff Classification and Value for Duty Under the *Customs Act*
 - Assessment or Determination for FST or Excise Tax
 - Classification and Valuation of Dumped or Subsidized Goods
 - Compensation Charges Under the *Softwood Lumber Products Export Charge Act* and the *Energy Administration Act*

ADVISORY

- **IMPORT SAFEGUARD INQUIRIES (GATT ART. XIX, FTA, GPT OR CARIBCAN)**
- **GENERAL INQUIRIES INTO ECONOMIC, TRADE AND TARIFF MATTERS AT THE REQUEST OF THE GOVERNMENT OR MINISTER OF FINANCE**
 - Matters Relating to the Economic, Trade or Commercial Interests of Canada
 - Matters Relating to the Tariff, Including Canada's International Rights and Obligations

Planning Activities

One of the Tribunal's corporate objectives is good planning. It wants to anticipate changes in the trade environment that will generate demands and opportunities for the Tribunal. It strives to maintain a reasonable balance between workload and resources, and to be sure that it has the necessary capacity before it takes on large projects.

To help achieve this objective, the Tribunal must play an active role in the planning of possible trade and tariff references from the government, though in doing so it must safeguard its independence. The Tribunal has instituted semi-annual planning sessions with government officials to discuss the

nature, timing and scope of possible trade and tariff inquiries that might be referred to the Tribunal over the following year or so, and the time and resources that the Tribunal may make available. Two planning sessions were held in fiscal year 1992-93. The Tribunal also holds internal planning sessions twice a year with members and staff.

The staff of the Tribunal is also active in interdepartmental discussions of possible references and of other matters that affect the economic, business and trade environment in which it works. This promotes better informed research and helps the Tribunal find the right balance between government references and its regular work. It also helps ensure that terms of reference and the

resources assigned to the project will allow the Tribunal to carry out its work independently and effectively.

Tribunal's Rules of Procedure

Order in Council P.C. 1991-1446 dated August 13, 1991, and registered on August 14, 1991, as SOR/91-499, revoked the *Canadian Import Tribunal Rules*, which the Tribunal had been using since its establishment, and implemented the *Canadian International Trade Tribunal Rules*.

Seminars, Speaking Engagements and Visits

The Tribunal recognizes that it has a legitimate role to play in demystifying its rather specialized quasi-judicial work.

To do so, Tribunal members and senior staff take part in business outlook and industry association conferences, and participate, where asked to do so, as speakers or panelists.

The Chairman of the Tribunal addressed the following groups in fiscal year 1992-93: Ontario Section of the Canadian Bar Association, the Council of Canadian Administrative Tribunals, the International Committee of the Canadian Chamber of Commerce, the UNCTAD (United Nations Conference on Trade and Development) Conference on Transparency in Trade held in Geneva, the Conference Board of Canada and the Canadian Importers Association.

Members and senior staff also addressed a diversified audience, including the European Community economic counsellors, the Canada-Korea Association, the Canadian Importers Association and trade representatives of developing countries.

Various individuals and groups visited the Tribunal during fiscal year 1992-93. They included, among others, trade officials from Columbia, Jamaica, Trinidad and Venezuela.

The Tribunal's annual retreat was held in December 1992, giving members and staff the opportunity to discuss issues and concerns of common interest. As part of the activities leading to the annual retreat, the Tribunal carried out an employee survey. Results of the survey were discussed at the annual retreat, and a formal action plan was developed by the Tribunal to follow up on suggestions and recommendations.

Human Resources

Again, in fiscal year 1992-93, the Tribunal took a number of measures to provide staff with training and development opportunities. All employees were given the opportunity to attend at least one training/development course. Hands-on training sessions were organized to allow staff to familiarize themselves with recent developments in the area of office automation. The Tribunal also entered into a number of secondment agreements with federal agencies and departments. These agreements are allowing staff to broaden their experience and expertise in areas that will benefit both the employees and the Tribunal.

A working committee of Tribunal employees also developed an Employee Recognition Program. The first recipients of the recognition awards will be announced in fiscal year 1993-94.

The Tribunal was also involved in preparatory work leading to the implementation of various changes in the area of human resources as a result of the proclamation of Bill C-26 (*Public Service Reform Act*).

The Tribunal has been actively involved in the activities relating to the introduction of the Universal Job Evaluation Plan and the conversion of positions from various occupational groups to the new GE group.

Miscellaneous

Members and staff have demonstrated their social commitment by contributing generously to the United Way HealthPartners fund-raising campaign with the result that the Tribunal again exceeded its campaign target. The Tribunal's annual event, at Christmas time, to raise funds for Gîte Ami and the Shepherds of Good Hope was also a huge success, thanks to the generosity of members and staff.

The Tribunal will be moving to new facilities in September 1993. In preparation for this move, the Tribunal has reviewed the design of its hearing rooms and is introducing a number of improvements that will enhance their functionality. The Tribunal will be pleased to welcome the public in the Laurier Tower of the Standard Life Centre at 333 Laurier Avenue West, Ottawa, Ontario.

Financial and Person-Year Resources

The Tribunal's financial and human resources are based on an average workload of appeals, dumping and subsidizing inquiries, reviews and safeguard actions, which assumes continuation of the workload patterns of its predecessors. If there are changes, for example, through a major work assignment, i.e. government reference, the Tribunal may be required to seek additional temporary resources.

Table 2.2 provides budgetary information extracted from the Tribunal's Main Estimates.

TABLE 2.2
BUDGETARY INFORMATION

	1992-93 Main Estimates (000)	1991-92 Main Estimates (000)
Personnel		
Salaries and Wages	5,825	5,646
Contributions to Employee Benefits	932	875
	<u>6,757</u>	<u>6,521</u>
Goods and Services	<u>1,313</u>	<u>1,377</u>
Total Operating	8,070	7,898
Capital	12	135
Total for Program	<u>8,082</u>	<u>8,033</u>

Table 2.3 presents the distribution of employees by category and occupational group.

TABLE 2.3
DISTRIBUTION OF EMPLOYEES BY CATEGORY AND OCCUPATIONAL GROUP

	Members and Staff 1992-93
Members	
Full-Time Members	9
Temporary Member	1
Management	
Executive Group	9
Scientific and Professional	
Economics, Sociology and Statistics	2
Law	7
Library Science	1
Administrative and Foreign Services	
Administrative Services	10
Commerce	20
Computer Systems Administration	3
Financial Administration	1
Information Services	4
Personnel Administration	2
Technical Category	
General Technical	1
Social Science Support	8
Administrative Support	
Clerical and Regulatory	12
Secretarial, Stenographic and Typing	9
Total	99*

*Excluding short-term resources brought in for special inquiries. As of March 31, 1993, there were an additional five persons on staff for the inquiry into the allocation of import quotas.

CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

Under SIMA, Canadian producers may have access to measures to offset certain forms of unfair and injurious competition from goods exported to Canada:

- 1) at prices lower than sales in the home market or lower than the cost of production (this is called "dumping"), or
- 2) that have benefited from government grants or other assistance (this is called "subsidizing").

In Canada, the determination of dumping and subsidizing is the responsibility of Revenue Canada, while the determination of whether such dumping or subsidizing has caused, is causing or is likely to cause "material injury" is the Tribunal's job. In accordance with GATT international trade rules, SIMA provides that anti-dumping or countervailing duties be levied on dumped or subsidized goods only if the Tribunal decides that such practices cause or threaten to cause material injury to Canadian production of like goods, or are retarding the establishment of the production in Canada of like goods.

A Canadian producer or an association of producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister). The Tribunal normally becomes involved at the stage of the issuance of a "preliminary determination" of dumping or subsidizing by the Deputy Minister.

In conducting its inquiries and arriving at its decisions, the Tribunal tries to ensure that all

interested parties are made aware of the inquiry through the issuance of a notice that is published in the Canada Gazette and forwarded to all known interested parties. It also requests information from interested parties, receives representations, conducts plant visits and holds public hearings. Parties participating in these proceedings may conduct their own cases or be represented by legal or other counsel.

The Tribunal's Rules of Procedure provide a list of factors and criteria to be examined in arriving at a judgment about what constitutes material injury. These include, among others, the effects of dumped or subsidized imports on prices and on factors such as production, sales, market shares, profits, employment and utilization of production capacity.

At the public hearing, the industry that lodged the complaint attempts to persuade the Tribunal that it has been materially injured by the dumping or subsidizing of the goods under investigation. The complainant's case is usually challenged by importers, and sometimes by exporters, that present contrary evidence. After cross-examination, each side has an opportunity to respond to the other's case and to summarize its own.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by Revenue Canada. The Tribunal has an additional 15 days to issue a statement of reasons supporting its finding (section 43 of SIMA). Revenue Canada assesses duties on the dumped or subsidized imports if the Tribunal has found that they are causing material injury.

Inquiries Conducted in the Last Fiscal Year

In fiscal year 1992-93, the Tribunal issued eight findings under the provisions of subsection 42(1) of SIMA.

TABLE 3.1		
DECISIONS ON ANTI-DUMPING INQUIRIES		
Number of Cases	Injury	No Injury
8	4	4

Highlights of each of the eight cases follow. Plant visits were undertaken in six of the eight cases to allow Tribunal members to examine first hand the state of domestic production processes and facilities. Estimates of the value of the domestic market for the goods under review have been provided in seven of the eight cases to give the reader a sense of the relative economic importance of each case. In the eighth case, it was not possible to provide this estimate without jeopardizing the confidentiality of the data provided by case participants.

Summaries of the cases have been prepared for general information purposes only. They aim to give the reader a sense of the Tribunal's work and have no legal status. The case titles have also been compressed to give the reader a good sense of the main goods covered by the finding. Appendix C (Table C-1) lists in detail the findings issued by the Tribunal during fiscal year 1992-93.

Machine Tufted Carpeting from the United States — NQ-91-006

Finding: Injury (April 21, 1992)

Tribunal Members: Coleman (presiding), Blouin, Coates

- In 1991, about 72 million square metres of machine tufted carpeting were sold domestically with a market value of about \$700 million.
- The Canadian Carpet Institute, producers of machine tufted carpeting, and National Carpet, a Division of NCM Carpet Mills Inc. (National), the producer of artificial grass carpeting, were the two complainants.

- The Tribunal found that there were three subcategories of like goods: residential, commercial and artificial grass carpeting. As a result, it examined the effects of dumping on the production of each of the three subcategories of goods.

Residential and Commercial Carpeting

- The complainants alleged that imports of machine tufted carpeting from the United States had taken 33 percentage points of market share over the past three years. As a result, the industry's market share, production, employment and capacity utilization plummeted. At the same time, the industry's financial performance fell sharply from an annual net profit of about \$32 million to a net loss of nearly \$19 million.
- Importers and representatives of some U.S. producers argued that factors other than dumping had caused the injury suffered by the Canadian producers. They cited the current recession, the rise in the value of the Canadian dollar, tariff declines under the FTA, imports by industry members, intra-industry price competition and certain industry marketing practices that had forced Canadian distributors to switch to U.S. suppliers for carpeting.
- The Tribunal, in looking at the effect of these factors, assessed trends in a number of economic indicators for the total market and its major segments. The Tribunal found essentially the same trends in the various market segments as in the total market. In a declining market, U.S. machine tufted carpeting gained market share at the expense of domestic production. Carpet prices were depressed, and the industry experienced a substantial underutilization of capacity and major reductions in employment. Because of these factors, the industry experienced growing financial losses in 1990 and 1991.
- The Tribunal was satisfied that, except for the dumping, machine tufted carpeting

from the United States would not have penetrated the domestic market to the same degree. The Tribunal recognized that, although tariff declines and the strong Canadian dollar had enhanced the competitiveness of U.S. carpeting and reduced the time in which the industry could adjust to a free-trade environment, dumped imports, by driving down producers' sales, had inhibited the industry's ability to finance the investments in plant and technology required to become more efficient.

- The Tribunal concluded that the significant increase in U.S. imports of dumped residential machine tufted carpeting and commercial machine tufted carpeting (with certain narrow exclusions) had been materially injurious to the production in Canada of like goods.
- With regard to the future, the Tribunal saw no relief in sight from the intense competitive pressures and, consequently, it concluded that the dumping of machine tufted carpeting from the United States was likely to continue to cause material injury to the domestic production of like goods.

Artificial Grass

- The Tribunal found a significant increase in import market share and the existence of price suppression in the marketplace for artificial grass during the 1990-91 period. The increase in import market share was responsible, in large measure, for the significant reduction in sales volumes and market share during the period by National, the producer of artificial grass. Because of much lower sales volumes, the contribution of these sales to the overall profitability of the company declined substantially in 1991 over 1990. The Tribunal was satisfied that the dumping was a cause of the significant increase in imports and the significant price pressure in 1990 and 1991. It found that the dumping of machine tufted artificial grass carpeting had caused and was causing

material injury to the production in Canada of like goods.

- With respect to the future, the Tribunal was not convinced that, in the absence of anti-dumping measures, National would be able to increase its market share and, thus, generate sufficient sales to increase this product's contribution to its overall profitability and make it a viable part of its total business. It concluded that the dumping of the subject artificial grass carpeting from the United States was likely to cause material injury to the production in Canada of like goods.

Single Row Tapered Roller Bearings from Japan — NQ-91-007

Finding: No Injury (July 9, 1992)

Tribunal Members: Hines (presiding), Coates, Hallissey

- Canadian Timken, Limited (CTL) is the only Canadian producer of single row tapered roller bearings whose total market value, in 1991, was estimated at considerably below \$50 million.
- In support of a positive finding, CTL argued that the dumping from Japan had forced it to reduce its book prices and limit price increases over the range of bearings offered. As a consequence of the unceasing pressure on prices, it asserted that there was material injury in the form of lost sales, reduced market share, price suppression, reduced employment and underutilization of production capacity.
- In response to CTL's allegations, counsel for the exporters and importers stated that the industry's injury was caused by factors other than dumping. They included the worldwide recession, CTL's traditional and rigid marketing practices, major design and technology changes, competitive pressures from major users, imports from non-subject countries, increased capacity in the

United States, and strategic alliances between major users and bearing suppliers.

- The market for single row tapered roller bearings declined steadily between 1989 and 1991. CTL's sales from domestic production and its imports, as well as imports from Japan and other countries, declined in step with the market during the period of inquiry. There were no significant changes in the shares of the market held by any of the main suppliers.
- The Tribunal examined the impact of the dumping on the two markets where bearings are sold. They are the original equipment manufacturer (OEM) market and the aftermarket.
- The OEM market consists of both the automotive and non-automotive segments. The Tribunal noted that CTL sold a large proportion of its domestic production to the automotive segment which is dominated by General Motors, Ford and Chrysler (the Big Three). However, the Tribunal also noted that sales of Japanese bearings to the Big Three were negligible.
- The non-automotive segment is comprised of manufacturers of construction and industrial equipment. The segment represents a small proportion of the OEM market and has been traditionally supplied by Japanese suppliers. However, the Tribunal noted that the decline in consumption in this segment exceeded that of the much larger automotive segment. As a consequence, CTL and other competing suppliers recorded a severe and proportional decline in sales.
- The evidence also showed that CTL's North American prices to multinational, automotive and non-automotive OEMs were negotiated by the parent companies in the United States. Given the foregoing, the Tribunal could not attribute CTL's suppressed prices, reduced sales revenue and the resulting losses in this OEM market segment to the dumping of bearings from Japan.

• The Tribunal observed that, in the aftermarket segment, annual consumption of single row tapered roller bearings did not decline as sharply as in the OEM market. Moreover, average prices were higher than those on sales to OEMs. Prices were firm and had even tended to rise. In addition, CTL's sales, which consisted of both domestically produced and imported products, remained very profitable. Therefore, the Tribunal determined that, in this market segment also, the evidence did not support CTL's allegations that the dumping resulted in lost sales and price suppression.

• The Tribunal concluded that, because the OEM market is largely insulated from offshore competition, it was unlikely that Japanese imports would capture a major share of this market in the future. Moreover, despite intense competition, CTL's sales in the aftermarket remained profitable, and there were no indications of an imminent change in the situation. Therefore, the Tribunal concluded that there was no likelihood that future imports of single row tapered roller bearings from Japan would be injurious to CTL.

Fresh Iceberg (Head) Lettuce, from the United States, for Use or Consumption in the Province of British Columbia — NQ-92-001

**Finding: Injury (November 30, 1992)
(Member Coleman dissenting)**

Tribunal Members: Fraleigh (presiding), Coleman, Blouin

• The total value of the market for fresh Iceberg (head) lettuce in British Columbia is approximately \$5 million. The complainant was the B.C. Vegetable Marketing Commission (the Commission). The industry consists of 21 growers that account for over 95 percent of production in British Columbia and sell through 2 sales agencies authorized by the Commission. The Commission claimed

that material injury from dumping had occurred in the form of price erosion, lost sales, reduced market share, a decline in the acreage planted in Iceberg lettuce and a reduction in the number of growers producing Iceberg lettuce in British Columbia.

- The majority of the Tribunal was satisfied that the B.C. industry constituted a regional market in accordance with Article 4 of the GATT Anti-Dumping Code and found that there was a concentration of imports into the regional market based on the density test, which was supported by the distribution test.
- During crop years 1988 to 1991, the B.C. market for fresh Iceberg (head) lettuce increased by 47 percent, while the B.C. industry lost 24 percentage points of market share to U.S. imports, primarily from California. The majority of the Tribunal found that the lost market share resulted from low-priced imports over the period, which were found to have been dumped during crop year 1991. Prior to crop year 1991, the industry had been reducing its financial losses. However, in crop year 1991, there was a collapse of U.S. F.O.B. prices resulting in the dumping of U.S. lettuce in the B.C. market, which caused an erosion of B.C. selling prices and led to severe financial losses for the industry. In response to these losses, a number of B.C. growers reduced acreage planted in crop year 1992, and others terminated their production of fresh Iceberg (head) lettuce. In crop year 1992, both U.S. and B.C. selling prices recovered, and the B.C. industry returned to profitability.
- The majority of the Tribunal was of the view that the pattern of lengthy periods of very low pricing in each crop year during the period of inquiry indicated a likelihood that injurious dumping would continue in the future in the absence of the imposition of anti-dumping duties. The Tribunal's finding excluded the periods from January 1 to May 31 and from October 16

to December 31 in each calendar year, which are the periods when B.C. growers have not traditionally supplied the market and the periods in which, therefore, no material injury can be caused. The Tribunal also found that there was no basis for excluding any packaging types of fresh Iceberg (head) lettuce from the finding of material injury.

- Member Coleman agreed with the majority that the B.C. industry is a regional market, but disagreed that there was a concentration of imports into the B.C. regional market. He agreed that there was evidence of injury to the B.C. industry, but concluded that it was the result of factors other than dumping. He found that, in 1991, B.C. growers overproduced, which contributed to the industry's financial losses because the market was fully supplied, and the additional production was not salable at any price. Member Coleman found that future injury was not imminent, as California production trends did not suggest a supply response to the rise in prices in 1992. Nor did he find evidence of an imminent reversal, in 1993, of the B.C. industry's return to profitability in 1992.

Bicycles and Frames from Taiwan and the People's Republic of China — NQ-92-002

Finding: Injury (December 11, 1992)

Tribunal Members: Trudeau (presiding), Coates, Hallissey

- The complainants, Groupe Procycle Inc., Raleigh Industries of Canada Limited and Victoria Precision Inc., accounted for approximately 90 percent of domestic bicycle production. The complainants claimed material injury in the form of lost market share, deteriorating financial results, as well as a reduction in employment and capacity utilization, and in deferred investments. In 1991, Canadian sales by

domestic and foreign producers amounted to about \$150 million.

- The Tribunal noted a dramatic and rapid shift in market share over the period 1988 through mid-1992. The industry's share of the market fell from three quarters to only slightly more than one third over the period, a total loss of 38 percentage points. Over this same period, the combined imports from Taiwan and China nearly tripled, to 727,000 units, and their market share increased sharply, by 39 percentage points. Moreover, the surge in imports displaced domestic sales in the two principal channels of distribution, namely, mass merchandisers and independent dealers.
- The evidence showed that increased demand for lower-priced bicycles was met by imports of Taiwanese and Chinese bicycles, and especially by the latter since 1991. Import data showed a clear concentration of the subject bicycles from these two countries in the highly competitive, highly price-sensitive, low-price-range segment of the market. As a result of lost sales and market share, the industry incurred a substantial loss of revenue and a consequent sharp drop in gross profits, as well as declining employment levels.
- The Tribunal saw a clear causal link between the material injury incurred by the complainants and the dumped imports, and noted a massive shift back to domestic sourcing in the period leading up and subsequent to the preliminary determination of dumping. The Tribunal was not persuaded that material injury was caused by factors unrelated to price. The evidence indicated that the complainants' record with respect to product quality, product range, delivery, return rates and cosmetics was not inferior to offshore suppliers. Moreover, claims that a shortfall in domestic capacity caused the surge in imports were not substantiated.

- With respect to the future, the Tribunal observed that this was the second inquiry into the injurious dumping of bicycles and frames. The first inquiry had involved Taiwan and South Korea. After a hiatus of several years, the dumping of bicycles from Taiwan had resumed. In addition, in this case, dumping had been found with respect to China, where several of the major production facilities had been financed by Taiwanese capital. This record clearly suggested to the Tribunal that, in the absence of the discipline of an injury finding, the dumping was likely to continue.
- In its consideration of injury to frame production, the Tribunal noted the precedent established in the first bicycle decision (*Bicycles, Assembled or Unassembled, and Bicycle Frames, Forks, Steel Handlebars and Wheels [Not Including Tires and Tubes], Originating in or Exported from the Republic of Korea and Taiwan* — ADT-11-77) and in the paint brushes decision (*Paint Brushes Using Natural Hog Bristle as the Filament Material, and the Components Thereof Known as "Heads," Originating in or Exported from the People's Republic of China* — ADT-6-84). In those cases, future injury findings were made for components, because to do otherwise would have frustrated the finding of material injury on the finished product. The Tribunal considered that the views set forth in those cases were equally applicable in this case.
- The Tribunal was of the view that an exclusion was warranted for bicycles in the high price range, the beginning of which converts to an F.O.B. country of origin price of CAN\$325 per bicycle. The Tribunal was of the opinion that, given the low volume of sales by the complainants and the low degree of price sensitivity, material injury had not been suffered in the high-price-range segment of the market.

**Fresh Cauliflower, from the United States,
for Use or Consumption in the Province of
British Columbia — NQ-92-003**

Finding: No injury (January 4, 1993)

Tribunal Members: Coates (presiding),
Trudeau, Hallissey

- The total value of the market for fresh cauliflower in British Columbia is approximately \$4 million. The complainant was the B.C. Vegetable Marketing Commission (the Commission). The industry consists of some 23 growers that sell through 3 sales agencies authorized by the Commission. The Commission claimed that material injury from dumping had occurred in the form of price erosion, lost profits, reduced sales and a decline in the acreage planted in cauliflower.
- The Tribunal was satisfied that the B.C. industry constituted a regional market in accordance with Article 4 of the GATT Anti-Dumping Code and found that there was a concentration of imports into the regional market under any of the tests previously used by the Tribunal.
- Between 1988 and July 1992, the B.C. market remained relatively steady. The B.C. cauliflower industry lost 2 percentage points of market share to U.S. imports over the period. B.C. selling prices were above the B.C. growers' cost of production (as estimated by the Ministry of Agriculture, Fisheries and Food, Province of British Columbia) in each crop year from 1988 to 1990, and the industry was profitable in each year. In 1991, U.S. F.O.B. prices dropped significantly, leading to the erosion of B.C. selling prices and rendering the industry unprofitable. Although losing profits in 1991, the industry increased sales volume and market share, while the total market declined by 8 percent. In 1992, U.S. and B.C. selling prices recovered prior to the imposition of anti-dumping duties and returned the industry to a very profitable position. Based on an average B.C. selling price of \$12.49 per carton and the estimated cost of

production of \$9.92, the industry achieved a 20-percent profit on sales in 1992.

- The Tribunal heard evidence that, while certain growers chose to reduce their acreage planted following the 1991 season, the largest grower in British Columbia, that had increased its acreage in 1990 and incurred a loss in 1991, chose to maintain the same acreage planted and was profitable in 1992.
- The domestic industry was profitable in four of the five years covered by the period of inquiry. In the view of the Tribunal, 1991 was an unusual year in terms of price levels and should not be regarded as indicative of the longer-term price trends for cauliflower. The Tribunal concluded that the possibility of future injurious dumping was neither imminent nor likely.

**Gypsum Board from the United States —
NQ-92-004**

Finding: Injury (January 20, 1993)

Tribunal Members: Macmillan
(presiding), Fraleigh, Blouin

- The total value of the market for gypsum board is approximately \$240 million. The Canadian industry consists primarily of the three complainants, CGC Inc., Domtar Inc. and Westroc Industries Limited, which together represent about 98 percent of the gypsum board produced in Canada. The complainants submitted that material injury resulting from the dumping took the form of price erosion and suppression, which caused substantially reduced sales revenues, gross margins and net income.
- The central issue in the inquiry was the effect that dumping had on domestic prices and, accordingly, whether any injury caused to Canadian production by the dumping was material. The Tribunal noted that gypsum board has the characteristics of a commodity product and that suppliers who failed to lower their prices ran the risk of losing their share of the market. The

evidence showed that the domestic producers had chosen to match the U.S. import prices and, in so doing, had experienced a progressively deteriorating financial performance. Gross margins decreased by 76 percent, and combined net income declined steadily to a loss of \$5.5 million over the first eight months of 1992.

- The Tribunal noted that there were various factors other than dumping which were contributing to the industry's injury. However, these other factors, whether taken individually or collectively, fell far short of explaining the extent of the decline in Canadian prices over the period reviewed. The average margin of dumping of over 27 percent was considered by the Tribunal to be a huge margin of undercutting in a commodity market such as gypsum board. In the Tribunal's estimation, it was highly probable that the dumping had caused prices to decline by well in excess of 10 percentage points, which translated to industry annual losses of tens of millions of dollars. Accordingly, the Tribunal concluded that the dumping of gypsum board had caused and was causing material injury.
- The Tribunal also concluded that all the conditions which gave rise to the U.S. dumping, such as soft demand and substantial overcapacity, were likely to persist in the foreseeable future and, therefore, that a finding of future injury was warranted.

Certain Waterproof Footwear from the Czech and Slovak Federal Republic, the People's Republic of China, the Republic of Korea and Taiwan — NQ-92-005

Finding: No injury (February 4, 1993)
(Member Gracey dissenting)

Tribunal Members: Blouin (presiding), Hines, Gracey

- The complainant in this case was the Shoe Manufacturers' Association of Canada representing an industry which currently

consists of eight producers. The industry submitted that injury from dumping had occurred in the form of lost sales, price suppression, loss of profitability and loss of employment. The domestic market for waterproof plastic footwear (excluding bottoms made of rubber or plastic) was estimated at more than \$40 million in 1991.

- In the three years from 1989 to 1991, the total apparent market for the subject finished footwear (i.e. footwear with waterproof plastic bottoms and non-leather tops [winter boots] and waterproof plastic footwear [rainboots]) experienced a 23-percent increase. Domestic producers' market share declined from 99 to 90 percent and imports from the subject countries increased from 1 to 8 percent. The market for waterproof winter boots accounted for approximately 80 percent of the total apparent market during the period of inquiry, rainboots accounting for the remainder. With regard to bottoms, the apparent market fluctuated between 4.4 and 5.2 million pairs during the period of inquiry, with imports accounting for approximately 2 percent of the total market, most of which originated from a non-subject country.
- The Tribunal was of the opinion that, although the industry had lost market share during the period of inquiry, much of this loss had been to imports at undumped prices. The evidence was strong that the competition among producers is intense, that domestic producers compete on prices and that retailers encourage this price competition. The Tribunal believed that this continuing intra-industry competition and the increasing import activity had a stronger impact on prices than the relatively small volume of dumped imports. Although some price suppression may have taken place, its extent was not sufficient to cause material injury.
- In the case of waterproof plastic footwear, although a substantial proportion of all imports examined by Revenue Canada was dumped, the Tribunal found that the industry did not provide substantive

information or evidence of past and present injury with respect to lost sales, price suppression or reduced profitability. Moreover, the industry did not demonstrate that the situation was likely to be modified in an injurious way in the near future. As for bottoms, very little evidence was presented.

- Member Gracey dissented with respect to future injury on waterproof winter boots from the Czech and Slovak Federal Republic and the People's Republic of China. He believed that imports of dumped boots would continue to increase in the absence of a finding of material injury and that China would continue to be an even more important source of imports following the move of the major Taiwanese producer/exporter from Taiwan to China. The evidence led Member Gracey to believe that the continuing propensity of merchandisers to import products at the lowest possible cost would result in increasingly lower-priced imports and would result in further price suppression. With regard to the Czech and Slovak Federal Republic, Member Gracey was of the opinion that, without a finding of future injury, dumped imports from this source would continue to increase.

Tomato Paste from the United States — NQ-92-006

Finding: No Injury (March 30, 1993)

**Tribunal Members: Hines (presiding),
Trudeau, Bergeron**

- The domestic industry consists of H.J. Heinz Company of Canada Ltd. (Heinz), Nabisco Brands Ltd./Grocery Division (Nabisco) and Sun-Brite Canning Limited. The production of tomato paste takes place at facilities located in southwestern Ontario. The size of the domestic market remains confidential because of the limited number of major players.

- At the pre-hearing conference, the Tribunal ruled that domestic production of like goods included production for both industrial sales and internal use.
- The complainants submitted that dumped imports had caused injury to the domestic production of tomato paste for industrial sales in the form of loss of production, sales, market share and profit margins, price erosion and reduced capacity utilization. The most significant evidence of injury was the complete suspension of production of tomato paste for industrial sales for the 1992 pack-year by the two largest producers, Heinz and Nabisco. The complainants further submitted that tomato-based products made from tomato paste imported at dumped prices had an economic advantage over tomato-based products made from domestically produced tomato paste. As a consequence, domestic producers of tomato-based products made from domestically produced tomato paste were forced to lower their prices in order to maintain sales volume, and, as a result, profit margins declined.
- Since Heinz and Nabisco represented over 90 percent of total domestic tomato paste production, the Tribunal focused its attention on the performance of these two firms during the period of inquiry.
- Heinz alleged that it lost two major accounts in 1991, primarily due to dumped imports from the United States. However, testimony by witnesses from these firms indicated that they had experienced major quality problems with the Heinz product and that the reason that they increased their purchases from the United States was related to quality rather than price. While these accounts accounted for a significant share of Heinz's industrial sales, the Tribunal noted that the lost volume represented a small proportion of its production of all tomato paste. The Tribunal also noted that Heinz's percentage gross margin for tomato-based products

was quite satisfactory and showed improvement in 1991 and 1992.

- With respect to Nabisco, the Tribunal observed that this firm lost some sales to U.S. imports in 1991. However, these losses were very small in comparison to the increase in Nabisco's production of tomato paste for internal use in that year. While the financial results for Nabisco's tomato-based products may not have been as favourable as the company would have liked, these results, in the opinion of the Tribunal, had very little to do with dumping.
- The Tribunal noted that, while Heinz and Nabisco decided to suspend production of tomato paste for industrial sales for the 1992 pack-year, only 46 percent of imports from the United States during the first half of 1992 were found to be dumped by the Deputy Minister. In addition, U.S. prices of tomato paste, which had been about US\$0.27/lb. F.O.B. California during the period of the Deputy Minister's investigation, started to firm up during the last half of 1992. The evidence showed that prices increased until February 1993, at which time the price of tomato paste was about US\$0.34/lb. F.O.B. California.
- With respect to the future, the Tribunal observed that testimony from witnesses and evidence in the record indicated that prices were likely to continue their upward movement in 1993. Although inventories in California remained high, the evidence showed that much of these inventories were committed. As well, indications were that the 1993 U.S. crop may be around 8 million tons, which is close to the historical norm. While a bumper crop could alter the future market situation in the United States, the Tribunal was of the view that it would be pure speculation to suggest that this might lead to dumping and material injury to the domestic producers of tomato paste.
- The Tribunal, therefore, concluded that the dumping in Canada of tomato paste from the United States had not caused, was not

causing and was not likely to cause material injury to the production in Canada of like goods.

Reviews of Findings of Material Injury

The Tribunal may review its findings of material injury at any time, on its own initiative or upon application from an interested party. Subsection 76(5) of SIMA also provides for a finding of material injury to lapse automatically five years after the date of issuance, unless a review has been initiated by the Tribunal. The Tribunal notifies parties eight months prior to the expiry date of a finding. If a party requests a review, the Tribunal will initiate a review if it determines that one is warranted. The purpose of a review is to determine whether anti-dumping or countervailing duties remain necessary. In doing so, the Tribunal usually assesses whether dumping is likely to resume or subsidizing is likely to continue and, if so, whether the dumping is likely to cause material injury to the domestic industry. In a review, the Tribunal follows procedures similar to those in the original injury inquiry.

Upon completion of a review, the Tribunal must issue an order with reasons, much as in the case of an original injury inquiry. If the finding is rescinded, anti-dumping or countervailing duties are no longer levied on imports. If the Tribunal continues a finding, it may also amend or alter the original finding to exclude a product or a country from it.

In the last fiscal year, the Tribunal received a request to review an order prior to its date of expiry (induction motors — RD-92-001). The decision as to whether a review was warranted was pending at the end of fiscal year 1992-93. In addition, the Tribunal issued two notices of expiry inviting interested parties to make their views known on whether the findings should be continued or allowed to expire. In one of the cases (pocket photo albums and refill sheets — LE-92-001), the submissions satisfied the

Tribunal that a review was warranted and, accordingly, a review was initiated. In the remaining case (tillage tools — LE-92-002), the decision was pending at the end of the fiscal year. The Tribunal also had to render its decision on a notice of expiry it issued last fiscal year (waterproof rubber footwear — LE-91-007). After examining the submissions it received, the Tribunal was satisfied that a review was warranted and it initiated a review.

TABLE 3.2
DECISIONS ON REVIEWS
OF ANTI-DUMPING ACTIONS

Cases Reviewed	Findings Rescinded	Findings Continued
6	3	3

Highlights of the six review cases that were decided in fiscal year 1992-93 are set out below. As in the case of original inquiries, plant visits were made by Tribunal members to observe domestic production processes and facilities. There were four site visits in the six review cases, with most cases involving at least one visit. Estimates of the value of the domestic market for the goods under review have been provided wherever possible. In three cases, this information is absent because it could not be made public without jeopardizing the confidentiality of the data provided by case participants. Appendix C (Table C-3) provides a detailed listing of the orders issued by the Tribunal during the fiscal year.

Yellow Onions, from the United States, for Use or Consumption in the Province of British Columbia (CIT-1-87) — RR-91-004

Order: Finding Continued
(May 22, 1992)

Tribunal Members: Hines (presiding), Macmillan, Fraleigh

- In the 1990-91 crop year, the estimated B.C. market for yellow onions totalled 30.9 million pounds or approximately \$4.9 million. The B.C. industry's share of

this market was 37 percent. The remaining 63 percent was comprised mainly of U.S. imports. The B.C. industry's market share fell substantially during the review period.

- The domestic industry, consisting of all B.C. onion growers, submitted that the finding be continued in order to prevent the resumption of injurious dumping of yellow onions from the United States. It further submitted that British Columbia was a regional market and rejected arguments that B.C. growers were not the domestic industry for injury determination purposes.
- The domestic industry further claimed that, if the finding were rescinded, the B.C. industry would not survive, and rescission of the finding would result in job losses both on farms and in the co-operatives that process, package and sell yellow onions.
- With regard to the issue of injury to a regional industry, the importer stated that there was not a concentration of dumped imports into British Columbia and that dumped imports would not cause injury to all or nearly all of the B.C. production. The importer also stated that U.S. onions were gaining market share because they were of a higher quality than B.C. yellow onions. Counsel argued that dumping was not the cause of the B.C. industry's financial problems; instead, small acreages and other factors were the cause.
- Yellow onions have a storage life of less than one year and, as a result, any remedy had to avoid penalizing end users during the period when producers were unable to supply the market. On April 30, 1987, the CIT excluded, from its finding of injury, imports of yellow onions between April 1 and August 15 of any calendar year.
- In considering the issue of injury to a regional industry, the Tribunal concluded that, given the situation of production and pricing in the United States, U.S. prices

were likely, on many occasions, to be lower than the normal values established by Revenue Canada. There would likely be a concentration of dumped imports into British Columbia if the finding were rescinded, and this dumping would be injurious to the B.C. industry's production of yellow onions. In reaching its decision, the Tribunal was of the opinion that rescission of the finding would result in material injury in the form of price erosion and reduced revenues to B.C. onion growers.

Key Blanks from Italy and Produced by or on Behalf of Silca S.p.A. of Italy, its Successors and Assigns (NQ-89-002) — RR-91-005

Order: Finding Rescinded (June 1, 1992)

Tribunal Members: Trudeau (presiding), Gracey, Hallissey

- Counsel for Silca S.p.A. (Silca) and Klassen Bronze Limited, an importer, requested that the Tribunal rescind the finding on the basis that Ilco Unican Inc. (Ilco), the sole Canadian producer, no longer produced key blanks.
- The domestic market for key blanks was stable subsequent to the original finding in 1989, with estimated annual sales of 40 million pieces. Ilco's share of the domestic market over the period 1989 to 1991 increased by a few percentage points. However, the percentage of Ilco's Canadian sales supplied from domestic production decreased significantly as the company's domestic sales from imports increased. Imports of key blanks were stable in 1990, but increased by 39 percent in volume in 1991, as a result of a significant increase in Ilco's imports.
- The Tribunal found that circumstances had changed considerably in the key blank market since the finding. Ilco had significantly reduced the range of key blanks produced in Canada by moving the

production of low- and medium-volume key blanks to the United States. In May 1991, Ilco suspended Canadian production to reduce inventories. It resumed production in February 1992, with the intention of producing seven or eight high-volume key blanks for the Canadian and export markets.

- The Tribunal noted that Ilco is sensitive to interest rate levels and exchange rates and responds quickly to changes in economic conditions. It stated that the effects of macro-economic conditions on Ilco, particularly on its costs of production, will be the determining factor on the company's level of production in Canada. The Tribunal also noted Ilco's testimony that the suspension of its domestic production was unrelated to Silca and stated that Ilco's main competitive challenge would be from U.S. imports. The tariff on U.S. imports of key blanks was eliminated in April 1990 and both Ilco and Silca agreed that prices for key blanks were uniform between Canada and the United States.
- Circumstances had also changed for Silca. Since the finding, Silca Keys U.S.A. Inc. (Silca Keys), which has the mandate to produce and sell every key blank profile required by a customer in the United States, Canada and Mexico, had commenced production at its factory in Ohio. Its Ohio factory would soon be producing 318 profiles, including the high volume profiles being produced by Ilco for the Canadian market. Also, Silca's capacity in Italy was almost fully utilized in supplying markets in Europe and the Middle East. The Tribunal found nothing in the evidence that led it to conclude that Silca Keys would not be supplying the Canadian market. The Tribunal also noted that Silca was no longer dumping key blanks in Canada from Italy.
- Based on these major changes in the market, both in production and imports, the Tribunal decided to rescind the finding.

Offset Printing Plates Produced by or on Behalf of Howson-Algraphy of the United Kingdom (CIT-4-87, R-4-88) — RR-91-006

Order: Finding Rescinded (May 22, 1992)

Tribunal Members: Coleman (presiding), Macmillan, Trudeau

- Du Pont Canada Inc. requested an immediate rescission of the finding because Hoechst Canada Inc. (Hoechst), the sole Canadian producer, intended to cease production in Canada. The Tribunal conducted a review without a public hearing.
- In the autumn of 1991, the sole Canadian producer had announced plans to cease production in Canada of offset printing plates in or before June 1992. The Tribunal concluded, as a result, that there was no basis upon which the finding should be continued in the absence of production in Canada or plans for the establishment of production in Canada of like goods.
- The Tribunal was not persuaded by Hoechst's argument that the finding should be continued until the end of 1992 to allow the completion of the liquidation of domestic inventories of offset printing plates. The Tribunal noted that Hoechst had announced definite plans to cease domestic production by mid-year and that its clients' needs during a large part of 1992 would be serviced with imported products. The Tribunal therefore concluded that the finding had served its purpose.
- The Tribunal's decision to rescind the finding could not be based on a change in ownership of the named exporter in the original finding as requested by Du Pont Canada Inc. and Du Pont (U.K.) Ltd. Subsection 43(1) of SIMA, read in the context of Article 8 of the GATT Anti-Dumping Code, clearly suggests that the intent underlying the identification of the suppliers is to identify the source of

dumping and, thus, a change in ownership has no direct impact on the finding.

Waterproof Rubber Footwear from Czechoslovakia, Poland, the Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and the People's Republic of China (ADT-4-79, ADT-2-82, R-7-87) — RR-92-001

**Order: Finding Continued (October 21, 1992)
(Member Hines dissenting)**

Tribunal Members: Trudeau (presiding), Hines, Hallissey

- The original injury finding was made in 1979. In 1982, a second injury finding was made against certain countries not named in the 1979 finding. In 1987, both of these findings were reviewed and continued. This was the second review of these findings. The industry argued that the findings should be continued because the industry remained vulnerable to renewed dumping.
- The domestic market for waterproof rubber footwear was estimated at \$28 million in 1991. It declined by 17 percent between 1987 and 1991. Since industry sales had been relatively stable over the same period, market share held by the industry increased from 54 to 69 percent over the same period. Total imports fell by one third between 1987 and 1991, resulting in a decline in their market share from 38 to 31 percent. Imports from the subject countries lost 14 percentage points of market share during the same period. Non-subject countries more than doubled their market share.
- The majority of the Tribunal noted that domestic prices were generally under downward pressure due to a number of economic factors such as the recession. There was also intense price competition among mass merchandisers, resulting in constant pressure to secure low-priced goods from domestic and foreign sources.

- The majority also believed that the large export capacity of the named countries, especially Korea, China, Malaysia and Poland, as evidenced by their large volume of shipments to the United States, raised the risk of dumping. This risk was heightened by the evidence which showed that the subject footwear originating in the named countries could be landed in Canada at a cost that was below the cost of production in Canada.
- The Tribunal also noted Revenue Canada enforcement data which showed the continued dumping of waterproof rubber footwear in the last five years by several of the named countries. Moreover, a preliminary determination of dumping against Czechoslovakia, China, Korea and Taiwan was made by Revenue Canada on October 7, 1992, involving waterproof plastic footwear, a product which is highly substitutable for waterproof rubber footwear.
- Member Hines did not consider that the evidence presented in the case supported a continuation of the finding. While the evidence showed that imports from the subject countries were low-cost, there was nothing to indicate that they were dumped. Moreover, imports of waterproof rubber footwear declined substantially in recent years and, in some cases, were at negligible levels. Furthermore, the industry has benefited from 13 years of protection and has been profitable.

**Butt Welding Pipe Fittings from Japan
(CIT-1-88) — RR-92-002**

**Order: Finding Rescinded
(November 13, 1992)**

**Tribunal Members: Fraleigh (presiding),
Trudeau, Hines**

- The Tribunal issued a notice to all known interested parties advising that a review of the finding was in order in light of reports that Macline Fittings Ltd. (Macline), the sole domestic producer, had ceased production. Interested parties were

requested to submit their views as to whether or not the finding should be immediately rescinded. The notice also stated that a public hearing would not be held.

- Submissions received from interested parties confirmed that Macline had indeed gone out of business. Three of the four submissions received requested that the finding be rescinded, while the fourth submission asked for a review of the anti-dumping duties against Japan.
- The Tribunal noted that the purpose of the original injury finding was to protect Canadian production against injurious dumping. As there was no longer production in Canada of butt welding pipe fittings, the Tribunal considered that a continuation of the finding was not warranted.

**Pocket Photo Albums and Refill Sheets
from Japan, the Republic of Korea, the
People's Republic of China, Hong Kong,
Taiwan, Singapore, Malaysia and the
Federal Republic of Germany (CIT-11-87)
— RR-92-003**

**Order: Finding Continued
(February 25, 1993)**

**Tribunal Members: Trudeau (presiding),
Hallissey, Bergeron**

- This case involved the review of an original injury finding by the CIT on February 26, 1988.
- The Canadian market for the subject photo albums grew steadily over the period from 1988 to 1990, before declining somewhat in 1991 and again in 1992. Overall growth from 1988 to 1992 was estimated at 41 percent. The principal Canadian producer of the subject photo albums is Desmarais & Frère Ltd. (Desmarais) of Longueuil, Quebec. Belt Stationery Mfg Ltd. of Montréal, Quebec, and Techmatic Mfg Inc. (Techmatic) of Brampton, Ontario, are smaller, but still significant producers of the subject photo albums,

while Hutchings & Patrick Inc. of Ottawa, Ontario, produces very small quantities of pocket photo albums. Both Desmarais and Techmatic submitted that the finding should be continued for all the subject countries. Desmarais contended that the very nature of the industry made it vulnerable to unfair trade practices in the form of dumping. Photo albums are not only a commodity product but are purchased by a small customer base in Canada and, hence, are price sensitive. The production of photo albums is also capital intensive and, therefore, sensitive to plant loading. Production can be switched easily and quickly from country to country, and Desmarais has experienced a long history of dumping and consequent injury to its production of photo albums of all kinds, including the subject photo albums.

- Climax Paper Converters, Limited (Climax) of Hong Kong, was the only exporter to participate in the hearing. Climax argued for a rescission of the finding, based largely on the evidence that Desmarais had a state-of-the-art plant which should enable it to compete in the Canadian market without further protection. Climax also claimed that no evidence had been presented to indicate that dumping of the subject photo albums in Canada would resume should the finding be rescinded. It noted that it had not participated in the Canadian market for the subject photo albums since the finding in 1988 and had no interest in dumping product in the Canadian market should the finding be rescinded. Its sales of photo albums to other customers in Europe had grown significantly in recent years, while sales to its largest customers in the United States had stabilized or decreased slightly.
- Paget Industries Inc., a Canadian importer and exporter of the subject photo albums that also subcontracts the production of certain pocket photo albums in Canada, argued that no evidence had been presented to suggest that dumping would resume from the subject countries and that the finding should, therefore, be rescinded.

- The Tribunal found that dumping would likely resume if the finding were rescinded. The evidence pointed to substantial capacity to produce the subject photo albums not only in Asia but also in the Federal Republic of Germany. Testimony by several witnesses pointed to the existence of excess capacity in those countries, capacity which is predominantly export oriented. Moreover, the evidence suggested a propensity on the part of the subject countries to dump the subject photo albums, as well as directly competitive photo albums, in other markets.
- The evidence also showed that producers' prices for the subject photo albums had declined over the past few years. In addition, competition from exporters in countries which had previously not participated in the Canadian market had intensified in recent years. The Tribunal was persuaded that, even though Desmarais was very technologically sophisticated and vertically integrated in its operations, it remained sensitive to price pressures and to plant load levels. From the financial data submitted by Desmarais, it was evident to the Tribunal that even this largest and most efficient Canadian producer would be unable to operate profitably if Canadian prices continued to decline and if its market share continued to be eroded.
- The Tribunal concluded that it was likely that the subject countries would resume dumping in order to regain entry into the Canadian market. The Tribunal also concluded that the volume of those dumped imports would likely be substantial and that the effects of that dumping would constitute injury of a material nature.

Advices Given Under Section 37 of SIMA

During fiscal year 1992-93, the Tribunal was asked on six occasions for an opinion as to whether information and evidence before the

Deputy Minister disclosed a reasonable indication that the dumping of the subject goods (certain hot-rolled, heat-treated carbon steel plate and high-strength low-alloy plate; certain hot-rolled carbon steel plate and high-strength low-alloy plate; certain flat hot-rolled carbon steel sheet products; certain cold-rolled steel sheet; certain pressure pipe fittings; and certain preformed fibreglass pipe insulation) had caused, was causing or was likely to cause material injury to the production in Canada of like goods.

SIMA requires that the Tribunal render its advice on the issue, without holding any hearings, on the basis of information that was before the Deputy Minister when the decision was reached. In the first four cases, the Tribunal concluded that the information disclosed a reasonable indication of material injury. The other two cases were pending at the end of the fiscal year. (See Appendix C, Tables C-5 and C-6.)

Public Interest Consideration Under Section 45 of SIMA

If, during an injury inquiry, the Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties may not be in the public interest, it must report this to the Minister of Finance with a statement of the facts and reasons that led to its conclusions. Also, during an injury inquiry, interested parties may make a request to the Tribunal for an opportunity to make representations on the matter of public interest. If the Tribunal decides to hear public interest representations, it does so upon completion of the injury inquiry.

During the last fiscal year, the Tribunal had to render its opinion on the question of public interest in a case involving bicycles and frames from Taiwan and the People's Republic of China. A brief summary of that case follows.

Bicycles and Frames from Taiwan and the People's Republic of China (NQ-92-002) — PB-92-001

Opinion: Reduction of Anti-Dumping Duties Not Required (January 27, 1993)

**Tribunal Members: Trudeau (presiding),
Coates, Hallissey**

- On December 11, 1992, the Tribunal found that the dumping of bicycles from Taiwan and the People's Republic of China had caused, was causing and was likely to cause material injury to the production in Canada of like goods, and that the dumping of the subject frames from the same countries was likely to cause material injury to the production in Canada of like goods. During the course of the proceedings, a number of written submissions were filed with respect to public interest considerations. After a review of the submissions, the Tribunal was of the opinion that the public interest did not require a reduction of the anti-dumping duties from their full amount.
- In the Tribunal's opinion, the vigorous price competition which had characterized the Canadian bicycle market in the past would continue to thrive following the imposition of anti-dumping duties. Foreign and domestic competition would ensure that Canadian mass merchandisers, dealers and, ultimately, bicycle users had access to a wide selection of bicycle models at reasonable prices.
- The Tribunal was satisfied that Canadian-produced bicycles were of high quality and that the domestic industry had sufficient production capacity to supply a substantial proportion of the Canadian bicycle market. Any demand that could not be met by domestic suppliers could be supplied by a number of alternative sources that were not subject to the anti-dumping measures.

Judicial Review of SIMA Decisions

Anti-dumping and countervailing duty decisions can be appealed to the Federal Court of Canada. There are two decisions currently under appeal (see Appendix C, Table C-8).

Binational Panel Reviews

In cases involving goods from the United States, judicial review by the Federal Court of Canada may be replaced by a review by a binational panel in accordance with amendments to SIMA brought about by the passage of the *Canada-United States Free Trade Agreement Implementation Act*.

Three of the Tribunal's decisions were the subject of binational panel reviews under Chapter Nineteen of the FTA during fiscal year 1992-93.

Binational panel proceedings in two of those decisions (machine tufted carpeting — NQ-91-006 and gypsum board — NQ-92-004) were still in progress at the end of the fiscal year.

As for the third Tribunal's decision before a binational panel (certain beer — NQ-91-002), proceedings were completed. A summary of this case follows.

Certain Beer Originating in or Exported from the United States by or on Behalf of Pabst Brewing Company, G. Heileman Brewing Company Inc. and The Stroh Brewery Company, their Successors and Assigns, for Use or Consumption in the Province of British Columbia — NQ-91-002 Remand

Determination on Remand: Injury (November 9, 1992)

Tribunal Members: Gracey (presiding), Fraleigh, Blouin

• On August 26, 1992, the Binational Panel (the Panel) issued an order in respect of its

review of the Tribunal's injury finding dated October 2, 1991, on certain beer originating in or exported from the United States for use or consumption in the province of British Columbia.

• The Panel affirmed the finding of the Tribunal in all respects but one:

- the Panel affirmed the Tribunal's determination that an isolated market for beer existed in British Columbia;

- the Panel also affirmed the Tribunal's determination that a concentration of dumped beer originating in the United States existed in British Columbia;

- the Panel dismissed the complainants' argument that the Tribunal improperly analyzed the economic condition of the producers of all or almost all production of beer in British Columbia on an aggregate industry basis rather than on an individual producer basis;

- finally, the Panel directed the Tribunal on remand to determine whether the dumping of beer originating in the United States, rather than the presence of dumped imports, was causing material injury to the producers of all or almost all of the production in British Columbia. Specifically, the Panel directed the Tribunal to state whether price suppression, or any other price-based harm caused by the dumping of the subject imports, supported a determination that the subject imports have caused, are causing or are likely to cause material injury to producers of all or almost all of the production within the B.C. market.

• On November 9, 1992, the Tribunal issued its determination on remand. In responding to the remand question, the Tribunal removed from the analysis of injury the costs associated with the bottle-to-can switch. With these costs removed from their income statements, both Labatt Breweries of British Columbia (Labatt) and Molson Brewery B.C., Ltd.

(Molson) continued to evidence inferior financial performance in fiscal 1991 compared to fiscal 1988. Between the same years, the Tribunal found that prices had been suppressed by 5 percent, resulting in millions of dollars of lost revenues and a corresponding reduction in gross profits for Labatt and Molson. Based on this evaluation, the Tribunal found that price suppression alone supported a determination that the subject imports had caused and were causing material injury to Labatt and Molson.

- On November 24, 1992, G. Heileman Brewing Company Inc. and The Stroh Brewery Company filed motions asking the Panel to review the Tribunal's determination on remand. The motions were granted on December 4, 1992, briefs and responses were filed, and the Panel heard oral argument on January 7, 1993.
- On February 8, 1993, the majority of the Panel concluded that the Tribunal had

addressed precisely the question directed to it on remand, had followed the Panel's instructions and had reached a result which was not patently unreasonable and which was supported by evidence on the record. For these reasons, the majority of the Panel affirmed the Tribunal's determination on remand.

Further Information

Appendix C provides detailed information on the Tribunal's SIMA activities for fiscal year 1992-93. Diagram C-1 contains a flow diagram which details the injury investigation procedures followed by Revenue Canada and the Tribunal. A pamphlet entitled Dumping and Subsidizing Injury Inquiries is also available for those who would like to have further guidance on the conduct of an injury inquiry. See Appendix F for a listing of this and other pertinent publications.

CHAPTER IV

APPEALS

The Tribunal, among its other duties, hears appeals from decisions of the Minister of National Revenue (the Minister) or of the Deputy Minister. The appeals involve mainly customs duties and excise matters.

The most common types of appeals are those respecting Revenue Canada's decisions on the classification of goods, which, in turn, determines the amount of tax or tariff that must be paid. Invariably, the party appealing the decision feels that another classification, under which a lower tax or tariff would apply, is more appropriate.

Although the Tribunal strives to be informal and accessible, there are certain procedures and time constraints that are imposed by law and by the Tribunal itself in order to provide quality service to the public in an efficient manner. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Under the Tribunal's Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a "brief." Generally, the brief states under which act the appeal is launched, gives an indication of the points in issue between the appellant and the Minister or Deputy Minister (in legal terminology, the Minister or the Deputy Minister is called the respondent) and states why the appellant believes the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief

setting forth Revenue Canada's position. Once these formalities are out of the way, the Secretary of the Tribunal contacts both parties in order to schedule a hearing. Hearings are generally conducted in public, before Tribunal members.

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their cases. They also enable the Tribunal to have the best information possible to make a decision. The appellant is the first to present the facts upon which a case is based, after which the respondent's case is presented. As in a court, the appellant and the respondent can call witnesses to present evidence supporting their positions, and these witnesses are questioned by the opposing parties in order to test the validity of their evidence. When all the evidence is gathered, the parties then present arguments in support of their respective positions.

The option of a file hearing is also offered to the appellant. Where a hearing is not required and the Tribunal intends not to proceed by way of a hearing, it may dispose of the matter on the basis of the written documentation before it. Rule 25 of the Tribunal's Rules of Procedure allows the Tribunal to proceed in this manner once the following conditions have been met. Both the appellant and the respondent must agree on the facts under appeal by submitting an agreed statement of facts, or the appellant must submit a written brief and have the respondent agree, in writing, to the facts presented in it. In addition, proceeding under rule 25 requires consent of counsel for the respondent, the Department of Justice. If it agrees, the respondent has the opportunity to file a written submission. The appellant can then make further written comments on the submission before the file is considered

by the Tribunal. Rule 25 also requires that a public notice of the written hearing intention be published in the Canada Gazette so that any other interested persons can make their own views known.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute including the reasons for its decision. For large and complicated cases, the Tribunal may take somewhat longer in reaching a decision.

If either the appellant or the respondent disagrees with the Tribunal's decision, it can appeal the decision to the Federal Court of Canada.

The Tribunal has a large inventory of appeals under the *Customs Act* and the *Excise Tax Act* that have been accumulating over many years. Some are awaiting decisions of other courts. Appeals on the GST are heard by the Tax Court of Canada. Once the Tribunal has heard all remaining appeals on the FST, its appeal work will be limited mainly to *Customs Act* and *SIMA* disputes. We intend to make the adjustment as quickly as possible so that taxpayers do not have to wait for decisions on FST cases years after the GST has been implemented.

The Tribunal has been reviewing outstanding cases with a view to purging those that the appellants no longer wish to pursue and to setting hearing dates for older cases. Once hearing dates are set, the Tribunal makes every effort to hold to them.

Appendix D (Diagram D-1) provides a flow diagram that outlines the steps normally involved in an appeal from a Customs and Excise decision.

Cases Considered in the Last Fiscal Year

During the 1992-93 fiscal year, the Tribunal heard 183 appeals of which 47 related to the *Customs Act*, 123 to the *Excise Tax Act*, 3 to

the *Excise Tax Act* as well as the *Softwood Lumber Products Export Charge Act*, 9 to *SIMA* and 1 to the *Softwood Lumber Products Export Charge Act*. Decisions were issued in 129 cases, of which 104 were heard during fiscal year 1992-93.

Act	Appeal	Allowed		
		In Part	Dismissed	
<i>Customs Act</i>	38	13	5	20
<i>Excise Tax Act</i>	84 ^{1,2}	33	8	43
SIMA	<u>7</u>	<u>3</u> ³	<u>-</u>	<u>4</u>
	129	49	13	67

1. Three of those appeals also related to the *Softwood Lumber Products Export Charge Act*.
2. In addition to being allowed, in whole or in part, six appeals were referred back to the Minister.
3. One appeal was also referred back to the Minister.

Decisions on the other cases are pending, but are well on the way to completion. Appendix D (Table D-1) lists decisions on appeals rendered in fiscal year 1992-93.

The Tribunal heard and dealt with an increased number of appeals in fiscal year 1992-93; 129 decisions were rendered compared to 88 in the previous fiscal year. Also, the number of appeals heard went from 96 to 183. Nevertheless, the Tribunal's backlog of appeals has increased in fiscal year 1992-93, as the Tribunal received the greatest number of appeals since its establishment. As had been expected, the number of new FST cases did not increase and will likely decline soon. However, the number of appeals filed under the *Customs Act* and *SIMA* increased significantly. For example, new appeals under the *Customs Act* filed in fiscal year 1992-93 represent 44 percent of the Tribunal's intake, compared to 25 percent in fiscal year 1991-92.

Of the 129 decisions rendered in the last fiscal year, 17 were appealed to the Federal Court of Canada. Of those decisions

rendered in the last three fiscal years, 33 are currently before the Federal Court of Canada.

Of the many cases heard by the Tribunal in carrying out its appeal functions, several decisions stand out from among the others, either because of the unusual nature of the product in dispute or because of the legal significance of the case. A brief résumé of a representative sample of such cases follows. These summaries have been prepared for general information purposes only. They aim to give the reader a sense of the Tribunal's work and have no legal status.

Polygram Inc. v. The Deputy Minister of National Revenue for Customs and Excise
— Appeal Nos. AP-89-151 and AP-89-165

Decisions: Appeals Dismissed
(May 7, 1992)

Tribunal Members: Macmillan
(Presiding), Hines and Coates

- The appellant, Polygram Inc., imported sound recordings from Polygram Record Service B.V. (Polygram B.V.) and Polygram Record Service GmbH. The recordings were imported in market-ready form for resale in Canada. Polygram Inc. was invoiced for the cost of making the recordings by the foreign Polygram manufacturers at the time of importation.
- The appellant entered into a licence agreement with Polygram B.V. Under the licence, the appellant was entitled to promote the music and artists of Polygram B.V.'s repertoire and to distribute and sell the recordings to the public. For these rights, the appellant had to pay Polygram B.V. an "all-in fee" that was calculated on the basis of the "net retail price."
- The issue in these appeals was whether the "all-in fee," as paid by the appellant to Polygram B.V., should have been added to the transaction value of the imported

sound recordings pursuant to subparagraph 48(5)(a)(iv) of the *Customs Act* and, thus, have been subject to the payment of customs duty.

- In determining whether the fee payment fell within the meaning of subparagraph 48(5)(a)(iv) of the *Customs Act*, three key criteria had to be met: (1) the payment was a royalty or licence fee paid directly or indirectly; (2) in respect of the goods; and (3) as a condition of the sale of the goods for export to Canada. There was no dispute on the first point.
- The Tribunal accepted that the fee was payable only on the sale of the sound recordings in Canada by Polygram Inc. and not at the time when the goods were imported into Canada or sold to the appellant by its parent or affiliate. However, the *Customs Act*, in stipulating that certain amounts should be included in calculating the transaction value of goods, encompasses this situation when it requires that various amounts be added "to the extent" that they are "not already included in the price paid or payable for the goods." Whether these charges are payable at the time of importation, sale of the goods or some other time is therefore made irrelevant by the wording of the legislation.
- The Tribunal viewed the fee as a payment made in respect of the goods. Testimony by industry witnesses established that the fee, payable on a particular sound recording, varied according to the price at which it was released. The price would vary according to the artist and cost of producing the recording. Therefore, the fee payable on different sound recordings may have been different. It was not a general payment unaffected by the specific sound recording. Rather, it was made in respect of the particular goods being sold.
- The Tribunal also concluded that payment of the fee was a condition of the sale of the goods for export to Canada. In the

Tribunal's view, without the signed fee agreement, which clearly set out the appellant's obligation to pay the fee, the appellant would not have been able to purchase the sound recordings from its foreign affiliates and import them into Canada. As such, purchase of the goods being imported was inseparable from payment of the fee. Accordingly, the fee was paid as a condition of the sale of the goods for export to Canada.

- The appeals were dismissed. Leave to appeal to the Federal Court of Canada was denied.

Techtouch Business Systems Ltd. v. The Minister of National Revenue — Appeal No. AP-91-206

Decision: Appeal Allowed in Part (September 19, 1992)

Tribunal Members: Fraleigh (presiding), Gracey, Hallissey

- In 1990, Parliament created Parts VIII and IX of the *Excise Tax Act*. Part VIII deals with transitional measures that were enacted in order to avoid double imposition on goods held in inventory as of January 1, 1991, because of the coming into force of the GST (Part IX) provisions. Section 120 of Part VIII provides for an FST inventory rebate. According to subsection 120(5) of the *Excise Tax Act*, a rebate can be payable, with respect to a person's inventory held on January 1, 1991, in an amount determined by a prescribed method using prescribed tax factors which are found in the *Federal Sales Tax Inventory Rebate Regulations* made by the Minister of Finance on December 18, 1990 (SOR/91-52, Canada Gazette Part II, Vol. 125, No. 2 at 265).
- On January 29, 1991, the appellant, Techtouch Business Systems Ltd., applied for an FST inventory rebate. The application included components in their

initial state and as elements of finished goods that were held in the appellant's inventory. The main issue in the appeal was whether the appellant was entitled to an FST inventory rebate under section 120 of the *Excise Tax Act* on the components that it purchased FST included, which were held in its inventory on January 1, 1991, either as is or as components of finished goods.

- The appellant's representative essentially argued that, if the rebate was not granted, taxes would be collected twice on the same components, since GST would be added to manufactured goods that contained materials on which FST had been paid. In his view, that could not have been the intent underlying the enactment of the FST rebate provision.
- The Tribunal allowed the appeal. It observed, firstly, that there were elements of double taxation in this case, as the goods manufactured by the appellant would be subject to GST while incorporating FST-paid components. The Tribunal was of the view that, as a principle of taxing legislation, double taxation should be considered to exist only where it is equitable or the language of the taxing statute is clear and unequivocal. The Tribunal also stated that there was no question that the components in issue were "tax-paid goods" within the meaning of section 120 of the *Excise Tax Act*; that a large part of these components was also held in the appellant's inventory as of January 1, 1991; and that the rest of the components had been incorporated into goods manufactured by the appellant, which goods were also held in its inventory at that date. In the Tribunal's view, both types of components were held in the appellant's inventory for taxable supply or, using the French version of the definition of "inventory", were "*destinées à la fourniture taxable ... par vente ou location*." The Tribunal noted that the word "*destinées*" in the French version indicates something that will happen in the

future. Therefore, components intended for manufactured goods were not excluded from the scope of section 120 of the *Excise Tax Act*, insofar as these goods would be destined for taxable supply. As to components already incorporated into finished goods, they were also held in the appellant's inventory as of January 1, 1991, insofar as the finished goods were held in inventory.

***Fletcher Leisure Group Inc. v. The Deputy Minister of National Revenue for Customs and Excise* — Appeal Nos. AP-90-023 and AP-90-127**

Decisions: Appeal No. AP-90-023 Allowed and Referred Back to the Minister and Appeal No. AP-90-127 Dismissed (March 19, 1993)

Tribunal Members: Trudeau (Presiding), Fraleigh, Hallissey

- Both of these appeals involved determinations by the Deputy Minister of the normal value of Scott brand ski poles imported during the period from July 18 to November 9, 1988, by Fletcher Leisure Group Inc. for purposes of assessing anti-dumping duties on ski poles subject to the ADT material injury finding dated May 14, 1984, in respect of alpine ski poles of aluminum alloy originating in or exported from France and Italy. (The ADT material injury finding of May 14, 1984, in Inquiry No. ADT-5-84, was continued by the CIT on December 23, 1986, in Review No. R-8-86, but it expired on December 22, 1991, after the Tribunal decided, on July 25, 1991, not to conduct a further review in Expiry No. LE-91-001.) The Deputy Minister's assessment of anti-dumping duties was based upon the margin of dumping, which is the amount by which the normal value, or the price of the goods sold in the exporting country or in any country other than Canada, exceeds the export price.

- The focus in Appeal No. AP-90-023 was the interpretation of the phrase "like goods" in section 15 of SIMA which requires that the normal value be based on the price of goods sold in the country of export to purchasers unrelated to the exporter. The Deputy Minister had determined that the "like goods" sold in the country of export, namely, Italy, were the ski poles "identical in all respects" to the imported ski poles, namely, the Scott brand ski poles. Since the Scott brand ski poles were sold only to one related customer in Italy, the Deputy Minister proceeded to calculate normal value under paragraph 19(b) of SIMA, as the aggregate of: (i) the cost of production of the ski poles; (ii) an amount for administrative, selling and all other costs; and (iii) an amount for profits.
- In the Tribunal's view, this determination of normal value was incorrect, as it failed to take into account paragraph (b) of the definition of "like goods" under subsection 2(1) of SIMA which defines "like goods" in the absence of "identical goods in all respects," as "goods the uses and other characteristics of which closely resemble" each other. The Tribunal found that the exporter of the Scott brand ski poles also sold private brand ski poles to unrelated companies in Italy and that these private brand ski poles closely resembled the Scott brand ski poles. The Tribunal, therefore, found that the private brand ski poles were "like goods" for purposes of section 15 of SIMA. Accordingly, the Tribunal allowed the appeal and directed the Deputy Minister to calculate the normal value of the Scott brand ski poles based upon the sales of these other private brand ski poles to unrelated companies. (This finding was specifically accepted in the Opinion and Order of the Panel of the Binational Panel in the matter of *Final Determination of Dumping made by Revenue Canada, Customs and Excise, Regarding Certain Machine Tufted Carpeting Originating in or Exported from the United States of America*, May 19, 1993, at 39.)

• In the second appeal, Appeal No. AP-90-127, the issue was whether the Deputy Minister had correctly determined the normal value of Kastle brand ski poles by advancing the export price by 47 percent under subsection 29(1) of SIMA. Subsection 29(1) of SIMA provides that "[w]here, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the determination of normal value ... as provided in sections 15 to 28, the normal value ... shall be determined in

such manner as the Minister specifies." In the Tribunal's view, the Deputy Minister was the judge of whether the conditions for the application of the prescription under subsection 29(1) of SIMA had been met. The manufacturer and exporter had ample opportunity to provide the information to enable the calculation of a specific normal value, but they chose not to pursue that option. The Tribunal, therefore, dismissed the appeal.

CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

The CITT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. The government may also ask the Tribunal to inquire into injury from imports on the provision of services. Canadian producers may also petition the Tribunal to undertake import safeguard inquiries. In these inquiries, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the government or the Minister of Finance. The process and procedures for these inquiries are, in many ways, analogous to those for its material injury inquiries under SIMA.

Economic and Trade Inquiries

Under section 18 of the CITT Act, the government may ask the Tribunal to inquire into and report on "any matter in relation to the economic, trade or commercial interests of Canada with respect to any goods or services." For example, such a study may be in the form of an examination of various alternatives for proposed government action to help certain industries adjust to changing economic and trade conditions, taking into account existing programs, legislation, the international environment and Canada's trading rights and obligations. Trade questions referred to the Tribunal may involve not only imports, but also export trade development and access conditions facing Canadian exports. In the last fiscal

year, the Tribunal completed an inquiry into the allocation of import quotas and started an inquiry into the competitiveness of the Canadian cattle and beef industries.

An Inquiry Into the Allocation of Import Quotas — GC-91-001

Tribunal Members: Macmillan
(presiding), Trudeau, Fraleigh

Terms of Reference

- In August 1991, the Governor in Council, on the recommendation of the Minister of Industry, Science and Technology and Minister for International Trade, the Minister of Agriculture and the Minister of Finance, under section 18 of the CITT Act, directed the Tribunal to undertake an inquiry concerning current and alternative methods of allocation of import quotas. The purpose of this inquiry was to provide recommendations on the optimum method or methods to allocate import quotas on a national basis for supply managed poultry and dairy products with respect to factors of equity, predictability, economic efficiency, transparency, entry into the industry, market responsiveness and competitiveness. The Tribunal was also directed to provide recommendations on principles that should generally guide any import quota allocation.
- The terms of reference directed the Tribunal to consider the following factors in its inquiry:
 - the methods by which import quotas have been allocated, for example, on the basis of traditional or historical imports, of market share, of earmarking shares for further processors of products not on the Import Control List, as well as other possible methods by which to allocate import quota, for example, through auction;

- the impact that different quota allocation methods have had or might have on the marketplace and on the competitive behaviour of its participants;
- whether the method by which import quota is allocated should differ as between the various agricultural products subject to import control;
- whether the method by which import quota is allocated should apply to the issuance of supplemental import permits; and
- that Canada has international rights and obligations under bilateral and multilateral trade agreements.

Inquiry Process

- This inquiry was one of the largest undertaken by the Tribunal. The Tribunal canvassed the views of participants from all trade levels of the dairy and poultry industries. It heard from existing quota holders as well as from those wishing to obtain access to this commodity.
- To obtain information not available from published sources, the Tribunal mailed questionnaires to approximately 330 firms at various trade levels in both industries. Tribunal members and staff visited over 20 poultry and dairy facilities in Quebec and Ontario. The inquiry resulted in 17 staff and consultant reports on various aspects of the affected industries.
- The Tribunal was also asked to hold public hearings in respect of the inquiry and provide an opportunity for oral and written submissions. The Tribunal received 151 submissions and held public hearings lasting 23 days. A total of 108 groups and individuals registered as participants in this inquiry.

- A preliminary public hearing was held in Ottawa, Ontario, in October 1991. Its purpose was to ensure that all interested parties had an opportunity to express their views on the Tribunal's planned inquiry process and the research program.
- The Tribunal held its first full public hearing in Ottawa from January 22 to February 6, 1992. Its purpose was to identify the major issues relating to the allocation of import quotas.
- The Tribunal held its final public hearing in Ottawa from June 8 to June 18, 1992. This hearing was attended by approximately 30 interested parties, including representatives of firms, industry associations, governments, supply management agencies and other associations. Its purpose was to understand the potential impacts of current and alternative methods of import quota allocation. This hearing also enabled interested parties to question the Tribunal's research staff on its Analytic Staff Report and consultants on their reports. Final arguments were also made at this hearing.

Final Report

- The Tribunal made recommendations on the optimum methods of import quota allocation for each of the products under study. For many of the products, the Tribunal recommended alternatives to the existing import quota allocation systems. The product-specific recommendations are as follows.
- For most of the products examined during its 14-month inquiry, including cheese, ice cream, yoghurt, buttermilk, evaporated/condensed milk and shell eggs (most of which tend to be consumed in the same form in which they are imported), the Tribunal recommended open auctions as the preferred way of distributing import quotas. The auctions

would be structured to allow some continuity in the marketplace, while allowing existing holders and new entrants a chance to compete on equal footing for import quotas.

- For chicken and turkey, the Tribunal recommended that import quotas be allocated first to further processors of processed poultry products, such as chicken TV dinners, not on the Import Control List. This sector must not only compete with U.S. products made with lower-cost poultry inputs, but also its tariff protection is declining under the FTA. The Tribunal recommended that the balance of import quotas for chicken and turkey be allocated to poultry processing operations in Canada on the basis of market share.
 - For broiler hatching eggs and chicks, the Tribunal recommended that the existing system of allocation based on market share be maintained, while import quotas for egg products continue to be allocated based principally on historical import performance.
 - In reviewing alternative allocation methods, the Tribunal considered the factors of equity, predictability, economic efficiency, transparency, entry to the industry, market responsiveness and competitiveness. The Tribunal concluded that none of its recommendations would undermine Canada's system of supply management or be inconsistent with Canada's international rights and obligations.
 - The final report was submitted to the government on October 13, 1992, as required. The report was tabled in Parliament on November 30, 1992.
 - The government is reviewing the report and has invited all interested parties to submit their views.
-

An Inquiry Into the Competitiveness of the Canadian Cattle and Beef Industries — GC-92-001

Tribunal Members: Trudeau (presiding), Fraleigh, Coates

Terms of Reference

- The Governor in Council (Order in Council P.C. 1992-2378 dated November 19, 1992), acting on a request from representatives of the Canadian cattle and beef industries, directed the Tribunal to undertake an inquiry under section 18 of the CITT Act into the competitiveness of the Canadian cattle and beef industries in the North American and world markets.
- The inquiry was referred to the Tribunal by the Governor in Council on the recommendation of the Minister of Finance, the Minister of Agriculture and the Minister of Industry, Science and Technology and Minister for International Trade.
- The terms of reference directed the Tribunal:
 - to develop a profile of the cattle and beef industries in Canada, the United States and Mexico in a global context, including trends in production, consumption and international trade;
 - to review conditions and trends in the structure of the cattle and beef industries in Canada, the United States and Mexico on a national and regional basis, including marketing and distribution systems;
 - to identify and examine factors that affect the competitiveness of the respective cattle and beef industries of Canada, the United States and Mexico in North American and other markets, in particular factors such as government policies, regulatory measures and subsidy and

other assistance programs, including those relating to transportation, the availability and cost of inputs, such as land and grain, environmental and production quality standards, and access to markets; and

- to provide an overall assessment, based on the above, of the opportunities and challenges facing the Canadian cattle and beef industries in the coming years.

Inquiry Process

- The Tribunal was asked to hold public hearings in respect of the inquiry. A preliminary public hearing/consultative forum was held in Ottawa on January 14, 1993. Proceedings started with a half-day consultative forum attended by 14 participants. These representatives of academia, research, industry and national organizations discussed issues such as product coverage, key topics, availability of information and the conduct of the inquiry. Following the conclusion of the consultative forum, all interested parties were given an opportunity to comment on the forum and to offer their views on the inquiry and identify competitiveness issues which they face themselves and as an industry.
- The Tribunal held regional public hearings in Calgary, Alberta, on March 24 and 25, 1993, and in Ottawa, Ontario, on April 21 and 22, 1993. These hearings were attended by 11 interested parties, including representatives of firms, industry associations, governments and other associations. These hearings provided an opportunity to present facts and arguments relevant to the inquiry.
- The Tribunal will hold its final public hearing in Ottawa beginning September 20, 1993. This hearing will enable interested parties to comment on the research work (to be released in August) of the Tribunal staff and its consultants. Final

argument will also be made at this hearing. The Tribunal expects to submit its report to the government by December 31, 1993.

Tariff-Related Inquiries

Under section 19 of the CITT Act, the Minister of Finance may refer to the Tribunal for inquiry and report "any tariff-related matter, including any matter concerning the international rights or obligations of Canada in connection therewith." Such inquiries may involve the examination of a variety of questions, such as the classification of goods or the reduction or elimination of tariffs and their impact on domestic industries. Inquiries concerning reductions in tariffs for textile products, carried out in 1989-90 and tariff anomalies carried out in 1990 at the request of the Minister of Finance, are good examples of the type of work that the Tribunal may be asked to perform under section 19 of the CITT Act.

The Minister of Finance has also referred to the Tribunal under section 19 of the CITT Act an inquiry into the public interest arising from the imposition of anti-dumping duties on U.S. beer imported into British Columbia. The Tribunal expects to turn to this inquiry in fiscal year 1993-94, unless there is an unexpected change in circumstances.

Inquiries on Injury from Imports

Under sections 19 and 20 of the CITT Act, the government may ask the Tribunal to inquire into and report on any tariff-related matter or any matter in relation to the importation of goods or provision of services which cause or threaten to cause injury to the production of goods or provision of services in Canada. Domestic producers can petition the Tribunal to undertake safeguard inquiries into serious injury from imports

under sections 22 to 30 of the CITT Act. Producers can also petition the Tribunal to undertake inquiries into injury from imports at preferential tariff rates from developing countries under a standing reference from the Minister of Finance under section 19 of the CITT Act.

Global Safeguard Inquiries

Article XIX of GATT provides that a contracting party may impose restrictions on the importation of a particular product in emergency situations for temporary periods where it is demonstrated that such imports cause or threaten serious injury to domestic producers. These safeguard actions may take the form of quantitative restrictions or surcharges.

Safeguard inquiries may be initiated at the request of the government under section 20 of the CITT Act, or domestic producers can file complaints of serious injury with the Tribunal under sections 22 to 30 of the CITT Act. Certain conditions must be met before the Tribunal will undertake an inquiry. Diagram E-1 in Appendix E provides information on the provisions for a producer-initiated safeguard complaint. In both government- and producer-triggered inquiries, the Tribunal must find that increased imports are causing injury to the production of like or directly competitive goods in Canada. If the Tribunal finds that the domestic industry is being seriously injured or that there is a threat of serious injury, then the government decides on the appropriate response. The government may ask the Tribunal to consider what the response should be if the Tribunal makes a finding of serious injury.

Sections 20.1 and 26 of the CITT Act provide that, where the Tribunal finds, in import safeguard inquiries, that goods originating in the United States and those from other countries are being imported in such quantities and under such conditions as

to be a principal cause of serious injury, it must determine whether the quantity of such goods from the United States is substantial in comparison with goods of the same kind from other sources and whether these goods from the United States contribute importantly to the serious injury or threat thereof.

During the past year, Algoma Steel Inc. filed a complaint of serious injury from imports. A summary of this case follows.

Certain Wide Flange Steel Shapes — CP-92-001

Decision: Not to Initiate a Safeguard Inquiry (August 24, 1992)

Tribunal Members: Hallissey (presiding), Coleman, Coates

- Algoma Steel Inc. (Algoma), the sole domestic producer of wide flange shapes, submitted that imports of like or directly competitive goods were being imported in such increased quantities and under such conditions as to cause and threaten serious injury to Algoma.
- Algoma submitted that U.S. imports had increased rapidly since 1987. By 1991, they had captured significant market share at the expense of Algoma. While Algoma had fought to maintain its market share against U.S. imports in a declining market situation, the low price levels established by U.S. mini-mills forced Algoma and importers from other countries to meet these price levels in order to sell wide flange shapes in Canada. The impact of these price levels was a significant decline in Algoma's financial performance and a significant reduction in employment levels.
- The Tribunal noted that, since 1988, U.S. imports had emerged as the major foreign source of supply for wide flange shapes. By 1991, they represented 91 percent of total imports, up from 9 percent in 1988. U.S. imports fell

in 1991 and, during the first four months of 1992, they dropped by 55 percent from the same period in 1991. Moreover, their share of total imports fell to 77 percent due to the gains made by imports from Luxembourg and the United Kingdom.

- The Tribunal considered that there was a reasonable indication that wide flange shapes had been imported under such conditions as to cause or threaten serious injury to Algoma. Low prices from U.S. mini-mills over the past five years have undoubtedly left North American integrated mills such as Algoma at a severe cost disadvantage. While Algoma met these low prices, it felt the effects in a deteriorating financial performance.
- This price erosion made Algoma all the more vulnerable to other pressures over the past five years. These pressures included the appreciation of the Canadian dollar, tariff reductions under the FTA, a significant decline in the market for wide flange shapes, the strike at Algoma in 1990 and the uncertainties caused by ownership changes.
- In considering the question as to whether the information before it disclosed a reasonable indication that imports were being imported in such increased quantities as to cause or threaten serious injury to Algoma, the Tribunal found that this requirement had not been met. The Tribunal noted the decline in imports in absolute terms since 1988 and, while they increased slightly in 1990, this increase was due to the demand created by the strike at Algoma. Imports fell again after early 1991 and dropped sharply in 1992.
- In examining the relative quantity of imports, the Tribunal noted the rapid and continuing decline in the market since the peak year of 1988, down 40 percent by the end of 1991, with a further decline in early 1992. Imports declined at an even faster rate than the overall market so that,

in 1991, their market share was lower than it was in 1988. The Tribunal also noted that imports fell relative to domestic production during the months from January 1991 to April 1992.

- The Tribunal concluded that it would not commence an inquiry under subsection 27(1) of the CITT Act, as the information before it did not disclose a reasonable indication that wide flange shapes were being imported into Canada in such increased quantities and under such conditions as to cause or threaten serious injury to Algoma.

GPT and CARIBCAN Safeguard Inquiries

Under section 19 of the CITT Act, the Minister of Finance has given a standing reference to the Tribunal directing it to examine and report on requests by Canadian producers for relief from Canada's GPT or CARIBCAN programs. Under the GPT, the Canadian government has reduced import tariffs for products of more than 150 developing countries. CARIBCAN provides duty-free access for most exports to Canada from the Commonwealth Caribbean countries. Canadian producers that think that they have been, or may be, injured by products imported under either of these programs may ask the government to either partially or entirely remove the GPT or CARIBCAN preference from any one or more of the countries to which it has been extended.

Producers applying for relief must show that they are being, or are likely to be, injured by actual or potential imports of like or directly competitive goods which benefit from either preferential tariff. Applicants do not have to represent all, or even any specific share, of the manufacture of that product in Canada, but the Tribunal will want to look at the

situation of the whole industry when considering the application.

Appendix E (Diagram E-2) provides more information on the provisions detailing the process of a producer-initiated GPT or CARIBCAN safeguard complaint.

Safeguard Inquiries Under the FTA

Under section 19.1 of the CITT Act, the Tribunal may also be asked to inquire into and report on the question of whether goods, on which tariffs are being reduced under the FTA with the United States, are being imported into Canada in such increased

quantities and under such conditions that they alone constitute a principal cause of serious injury to domestic producers of like or directly competitive goods.

Under section 23 of the CITT Act, Canadian producers can also file directly with the Tribunal a complaint of serious injury because of increased imports resulting from tariff reductions under the FTA. These complaints are treated in the same way as petitions for global safeguard actions as set out in Diagram E-1 of Appendix E. If the Tribunal makes a finding of serious injury in an inquiry requested by the government or initiated by a producer, the government can restore tariff protection for a period of three years.

CHAPTER VI

CANADA'S USE OF THE GATT ANTI-DUMPING CODE

Update

In 1990, a study was completed by the research branch concerning Canada's use of the GATT Anti-Dumping Code. The study indicated that Canada's use of the Anti-Dumping Code, as measured by a number of indicators, had declined since the mid-1980s.

In last year's annual report, some of the indicators used in the 1990 study were updated by including data for the calendar year 1991. The update determined that the number of anti-dumping actions added in 1991 exceeded the combined actions added in 1990 and 1989. It was also found that the share of manufactured domestic shipments affected by anti-dumping actions against the United States increased significantly in 1991.

In this chapter, we provide a further update on some of the key indicators used in the 1990 study.

Incidence of Anti-Dumping Findings in Canada

In this section, we examine the record of the Tribunal and its predecessors in adding to and reducing the number of anti-dumping actions in place. Table 6.1 illustrates the inventory of anti-dumping actions in place from 1980 to 1992 and shows that:

- the largest increase of anti-dumping actions in place occurred in 1983, following the 1981-82 recession; and

- the number of anti-dumping actions revoked during the 1989-92 period represented about 70 percent of the actions in place at the beginning of the period.

TABLE 6.1 ANTI-DUMPING ACTIONS IN PLACE 1980-92			
Year	Number of Anti-Dumping Actions		
	Added	Revoked*	In Place (Dec. 31)
1979			88
1980	13	6	95
1981	12	6	101
1982	27	13	115
1983	30	4	141
1984	18	12	147
Subtotal	100	41	
1985	30	21	156
1986	8	12	152
1987	17	14	155
1988	3	22	136
Subtotal	58	69	
1989	1	15	122
1990	10	58	74
1991	12	17	69
1992	4	6	67
Subtotal	27	96	
TOTAL	273 ¹	206	

*Includes actions rescinded and expired.

1. Includes 88 findings in place at the beginning of 1980.

Source: Tribunal Research Branch Data Base.

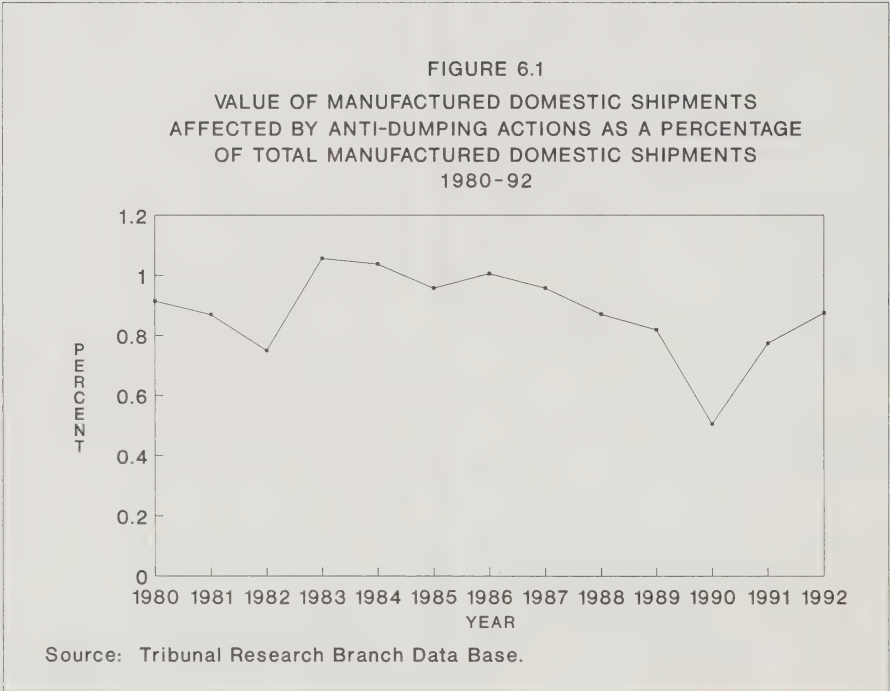
The largest reduction in existing actions occurred in 1990, as the Tribunal completed reviews of many cases that had been automatically extended for up to five years with the introduction of SIMA on December 1, 1984. Actions in place continued to decline after 1990 and, by 1992, actions in place were at their lowest level for the period.

The number of anti-dumping actions added in 1992 was down sharply from the previous two years. Three of the four cases added involved imports from one country, the United States. In contrast, there were a number of actions added in 1991 and 1990 which concerned imports from several countries.

Anti-Dumping Coverage of Manufacturing Industries

Figure 6.1 illustrates the value of manufactured domestic shipments affected by anti-dumping actions as a percentage of total manufactured domestic shipments in the period 1980-92. On average, about 0.9 percent of manufactured domestic shipments were affected by anti-dumping actions. This ranged from a high of about 1.1 percent in 1983, following the 1981-82 recession, to a low of 0.5 percent in 1990. The proportion of manufactured domestic shipments affected by anti-dumping actions rose in 1991. Some of the cases concerned large industries affected by

imports from the United States (beer and machine tufted carpeting). In 1992, the proportion of manufactured domestic shipments affected by anti-dumping actions continued to rise because of a large case involving bicycles and frames from Taiwan and the People's Republic of China. In 1992, about \$1.4 billion (current dollars) of manufactured domestic shipments were affected by anti-dumping actions. The footwear, leather, and textile and clothing sector recorded the highest total proportion of manufactured domestic shipments affected by anti-dumping actions (54 percent) for the third consecutive year. Prior to 1990, the sector of primary metals was the most affected by anti-dumping actions (1980-90 period).

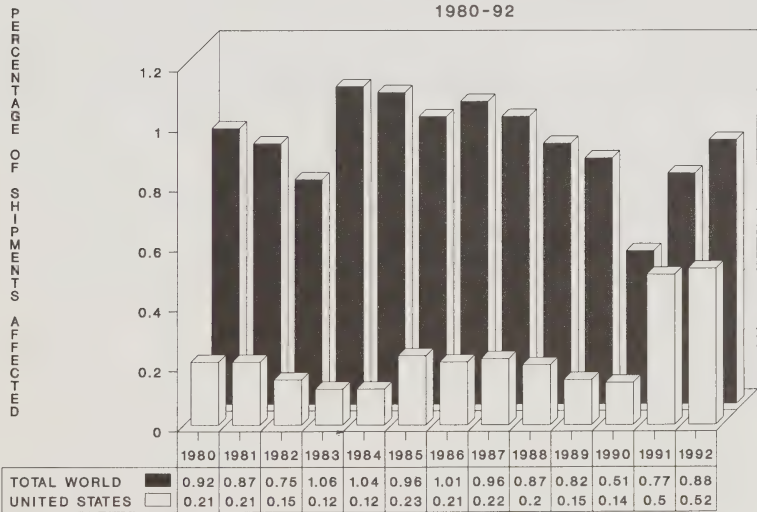


Anti-Dumping Actions Affecting Imports from the United States

Figure 6.2 shows that, over the 1980-92 period, the share of manufactured domestic shipments affected by anti-dumping actions directed only at imports from the United States averaged just above 0.2 percent. This compares to a 0.9-percent average coverage over the same period for anti-dumping actions directed at imports from all countries, including the

United States. The coverage of actions against imports from the United States increased sharply in 1991, as a consequence of actions concerning beer and carpeting. In 1992, the amount of coverage affecting U.S. imports increased at a slower rate than the coverage of actions for all countries, including the United States. This was because the value of shipments by industries affected by actions against U.S. imports was much lower than that of shipments affected by actions against imports from countries other than the United States.

FIGURE 6.2
 SHARE OF MANUFACTURED DOMESTIC SHIPMENTS
 AFFECTED BY ANTI-DUMPING ACTIONS DIRECTED AT THE
 UNITED STATES COMPARED TO THE TOTAL WORLD
 1980-92



Source: Tribunal Research Branch Data Base.

APPENDIXES

APPENDIX A

Relevant Legislation of the Tribunal

Section	Authority
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CITT Act

18	Special Fact-Finding and Advisory Inquiries on Economic, Trade and Tariff Issues of General or Sectorial Interest to Canada
19	Inquiries Into Tariff-Related Matters
19.1 and 23.1	Safeguard Inquiries on Goods Imported from the United States
20	Safeguard Inquiries on the Importation of Goods Into Canada or the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers

SIMA (Anti-Dumping and Countervailing Duties)

33, 34, 35 and 37	Advice to the Deputy Minister of National Revenue for Customs and Excise on Injury
42	Inquiries With Respect to Material Injury Caused by the Dumping and Subsidizing of Goods
44	Recommencement of Hearing (on Remand from the Federal Court of Canada or a Binational Panel)
45	Advice on Public Interest Considerations
61	Appeals of Re-Determination Pursuant to Section 59
76	Reviews of Findings of Material Injury
89	Rulings on Who is Importer

Customs Act

67	Appeals of Certain Decisions of the Deputy Minister of National Revenue for Customs and Excise
68	New Hearings on Remand from the Federal Court of Canada
70	References

Excise Tax Act

81.19, 81.21, 81.22, 81.23 and 81.33	Appeals of Certain Decisions of the Minister of National Revenue
81.32	Extensions of Time for Objection or Appeal

Section	Authority
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Softwood Lumber Products Export Charge Act

18	Appeals
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Energy Administration Act

13.63	Appeals
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APPENDIX B

Organization Chart

CHAIRMAN

John C. Coleman

VICE-CHAIRMEN

Kathleen E. Macmillan

Arthur B. Trudeau

MEMBERS

Sidney A. Fraleigh

W. Roy Hines

Michèle Blouin

Charles A. Gracey

Robert C. Coates, Q.C.

Desmond Hallissey

Lise Bergeron

RESEARCH BRANCH

Executive Director of Research

Ronald W. Erdmann

Research Directors

Marcel Brazeau

Sandy Greig

Réal Roy

Selik Shainfarber

Peter Welsh

Director, Economics

Dennis Featherstone

Chief, Statistical Research

Shiu Yeu Li

SECRETARIAT

Secretary

Michel P. Granger

LEGAL SERVICES BRANCH

General Counsel

Debra P. Steger

APPENDIX C — SIMA ACTIVITIES

Table C-1

Findings Issued Under Section 43 of SIMA Between April 1, 1992, and March 31, 1993

Inquiry No.	Product and Country of Origin	Date of Finding	Finding
NQ-91-006	Machine Tufted Carpeting With Pile Predominantly of Nylon, Other Polyamide, Polyester or Polypropylene Yarns, Excluding Automotive Carpeting and Floor Coverings of an Area Less Than 5 m ² , from the United States of America	April 21, 1992	Injury
NQ-91-007	Single Row Tapered Roller Bearings, Including Cups and Cone Assemblies, in the Sizes from 1.000 in. (25.400 mm) Up to and Including 6.625 in. (168.275 mm) Outside Diameter, from Japan	July 9, 1992	No Injury
NQ-92-001	Fresh Iceberg (Head) Lettuce, from the United States of America, for Use or Consumption in the Province of British Columbia	November 30, 1992	Injury
NQ-92-002	Bicycles, Assembled or Unassembled, With Wheel Diameters of 16 in. (40.64 cm) and Greater, and Frames Thereof, from Taiwan and the People's Republic of China	December 11, 1992	Injury
NQ-92-003	Fresh Cauliflower, from the United States of America, for Use of Consumption in the Province of British Columbia	January 4, 1993	No Injury
NQ-92-004	Gypsum Board, Composed Primarily of a Gypsum Core, With Paper Surfacing Bonded to the Core, from the United States of America	January 20, 1993	Injury
NQ-92-005	Footwear With Waterproof Plastic Bottoms and Non-Leather Tops, Waterproof Bottoms of Rubber or Plastic, and Waterproof Plastic Footwear, Excluding Safety and Sports Footwear, from the Czech and Slovak Federal Republic, the People's Republic of China, the Republic of Korea and Taiwan	February 4, 1993	No Injury
NQ-92-006	Tomato Paste in Containers Larger Than 100 Fluid Ounces from the United States of America	March 30, 1993	No Injury

Table C-2

Inquiries Into Dumping and/or Subsidizing Commenced Under Section 42 of SIMA, But Not Yet Decided as of March 31, 1993

Inquiry No.	Product and Country of Origin	Date of Notice	Last Legal Date to Issue Finding
NQ-92-007	Certain Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate Not Further Manufactured Than Hot-Rolled, Heat-Treated or Not, in Cut Lengths, in Widths from 24 in. (610 mm) to 152 in. (3,860 mm) Inclusive, and Thicknesses from 0.187 in. (4.75 mm) to 4.000 in. (101.60 mm) Inclusive, from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom, the United States of America and the Former Yugoslav Republic of Macedonia	January 11, 1993	May 6, 1993
NQ-92-008	Certain Flat Hot-Rolled Carbon Steel Strip, Sheet and Floor Plate from the Federal Republic of Germany, France, Italy, New Zealand, the United Kingdom and the United States of America, Produced to Any Specification of the ASTM Standard or Any Other Recognized Designation System or Standard, or Produced to Any Proprietary Specification, in Coils or Cut Lengths, in Widths from 3/4 in. to 96 in. (19 mm to 2,439 mm) Inclusive and in Thicknesses from 0.060 in. to 0.625 in. (1.60 mm to 15.87 mm) Inclusive	February 2, 1993	May 31, 1993
NQ-92-009	Cold-Reduced Flat-Rolled Sheet Products of Carbon Steel (Including High-Strength Low-Alloy Steel), in Coils or Cut Lengths (Not Painted, Clad, Plated or Coated) in Widths Up to and Including 80 in. (2,032 mm), and in Thicknesses from 0.014 in. to 0.142 in. (0.35 mm to 3.61 mm) Inclusive, from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States of America	April 7, 1993	July 29, 1993

Table C-3

Orders Issued Under Section 76 of SIMA Between April 1, 1992, and March 31, 1993

Review No.	Product and Country of Origin	Date of Order	Order
RR-91-004	Fresh, Whole, Yellow Onions, from the United States of America, for Use or Consumption in the Province of British Columbia	May 22, 1992	Finding Continued
RR-91-005	Brass Replacement Key Blanks from Italy and Produced by or on Behalf of Silca S.p.A. of Italy, its Successors and Assigns	June 1, 1992	Finding Rescinded
RR-91-006	Certain Chemically Presensitized Aluminum Offset Printing Plates Produced by or on Behalf of Howson-Algraphy of the United Kingdom	May 22, 1992	Finding Rescinded
RR-92-001	Waterproof Rubber Footwear Constructed Wholly or in Part of Rubber, Worn Over the Foot or Shoe, With or Without Liners, Linings, Fasteners or Safety Features, from Czechoslovakia, Poland, the Republic of Korea and Taiwan, But Excluding Snowmobile Boots, Rubber-Bottom/Leather-Top Boots and Safety Footwear That is Specially Designed to Protect the Wearer from Injury and Which Incorporates Special Features Such as Safety Box Toes, Steel Toes, Steel Safety Soles, Non-Slip Soles or Specially Compounded Rubber Impervious to Acids and Other Chemicals; and Waterproof Rubber Footwear Constructed Wholly or in Part of Rubber With or Without Liners, Linings, Fasteners or Safety Features But Excluding Snowmobile Boots, Rubber-Bottom/Leather-Top Boots, and Safety Footwear, from Hong Kong, Malaysia, Yugoslavia and the People's Republic of China	October 21, 1992	Finding Continued
RR-92-002	Certain Butt Welding Pipe Fittings of Austenitic Stainless Steel Made to ASTM A-403 Specifications, in Nominal Pipe Sizes (Outside Diameters) 1/2 in.-5 in., in Schedules 5, 10, 40, 80, 160, Welded or Seamless, from Japan	November 13, 1992	Finding Rescinded
RR-92-003	Photo Albums With Pocket, Slip-In or Flip-Up Style Sheets (Imported Together or Separately), and Refill Sheets Thereof, from Japan, the Republic of Korea, the People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and the Federal Republic of Germany	February 25, 1993	Finding Continued

Table C-4

Notices of Expiry of AD or CVD Findings Issued Between April 1, 1992, and March 31, 1993

Expiry No.	Product and Country of Origin	Date of Decision	Outcome
LE-91-007	Waterproof Rubber Footwear Constructed Wholly or in Part of Rubber, Worn Over the Foot or Shoe, With or Without Liners, Linings, Fasteners or Safety Features, from Czechoslovakia, Poland, the Republic of Korea and Taiwan, But Excluding Snowmobile Boots, Rubber-Bottom/Leather-Top Boots and Safety Footwear That is Specially Designed to Protect the Wearer from Injury and Which Incorporates Special Features Such as Safety Box Toes, Steel Toes, Steel Safety Soles, Non-Slip Soles or Specially Compounded Rubber Impervious to Acids and Other Chemicals; and Waterproof Rubber Footwear Constructed Wholly or in Part of Rubber With or Without Liners, Linings, Fasteners or Safety Features But Excluding Snowmobile Boots, Rubber-Bottom/Leather-Top Boots, and Safety Footwear, from Hong Kong, Malaysia, Yugoslavia and the People's Republic of China	June 1, 1992	Initiation of Review No. RR-92-001
LE-92-001	Photo Albums With Pocket, Slip-In or Flip-Up Style Sheets (Imported Together or Separately), and Refill Sheets Thereof, from Japan, the Republic of Korea, the People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and the Federal Republic of Germany	October 19, 1992	Initiation of Review No. RR-92-003
LE-92-002	Deep Tillage Sweeps, Field Cultivator Sweeps, Reversible Points, Reversible Heavy Duty Chisels, Reversible Twisted Chisels and Reversible Furrow Shovels, Known as Tillage or Earth Engaging Tools, Used on Chisel Plows and Field Cultivators, from Brazil		Decision Pending as of March 31, 1993

Table C-5**Advices Given Under Section 37 of SIMA Between April 1, 1992, and March 31, 1993**

Reference No.	Product and Country of Origin	Date of Advice	Advice
RE-92-001	Certain Hot-Rolled, Heat-Treated Carbon Steel Plate and High-Strength Low-Alloy Plate from Belgium, Brazil, the Czech and Slovak Federal Republic, Denmark, the Federal Republic of Germany, Romania, the Republic of Slovenia, the United Kingdom, the United States of America and the Former Yugoslav Republic of Macedonia	October 13, 1992	Reasonable Indication of Injury
RE-92-002	Certain Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate from Belgium, Brazil, the Czech and Slovak Federal Republic, Denmark, the Federal Republic of Germany, Romania, the Republic of Slovenia, the United Kingdom, the United States of America and the Former Yugoslav Republic of Macedonia	October 13, 1992	Reasonable Indication of Injury
RE-92-003	Certain Flat Hot-Rolled Carbon Steel Sheet Products from the Federal Republic of Germany, France, Italy, New Zealand, the United Kingdom and the United States of America	October 27, 1992	Reasonable Indication of injury
RE-92-004	Certain Cold-Rolled Steel Sheet from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States of America	December 31, 1992	Reasonable Indication of injury

Table C-6**References Made Under Section 34 of SIMA With Decisions Pending as of March 31, 1993**

Reference No.	Product and Country of Origin	Last Legal Date to Issue Advice
RE-92-005	Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, Made of Cast Copper Alloy, Wrought Copper Alloy or Wrought Copper, in Diameters Up to 6 in. and the Metric Equivalent, for Use in Heating, Plumbing, Air Conditioning and Refrigeration Applications, from the United States of America and Produced by or on Behalf of Elkhart Products Corporation, Nibco Inc. and Mueller Industries Inc., Their Successors and Assigns	April 5, 1993
RE-92-006	Certain Preformed Fibreglass Pipe Insulation With a Vapour Barrier from the United States of America	April 5, 1993

Table C-7**Other Activities Under SIMA****1. Public Interest Consideration Under Section 45 of SIMA**

Inquiry No.	Product and Country of Origin	Date of Opinion	Opinion
PB-92-001 (NQ-92-002)	Bicycles, Assembled or Unassembled, With Wheel Diameters of 16 in. (40.64 cm) and Greater, and Frames Thereof, from Taiwan and the People's Republic of China	January 27, 1993	Reduction of Anti-Dumping Duties Not Required

2. Request for Review of Order Under Subsection 76(2) of SIMA With Decision Pending as of March 31, 1993

Request for Review No.	Product and Country of Origin
RD-92-001	Certain Integral Horsepower Induction Motors, 1 HP to 200 HP Inclusive, from the United States of America and Certain Polyphase Induction Motors, 1 HP to 200 HP Inclusive, from Brazil, Japan, Mexico, Poland, Taiwan and the United Kingdom

3. Determination on Remand Under Section 77.16 of SIMA Between April 1, 1992, and March 31, 1993

Inquiry No.	Product and Country of Origin	Date of Determination on Remand	Determination on Remand
NQ-91-002 Remand	Certain Beer Originating in or Exported from the United States of America by or on Behalf of Pabst Brewing Company, G. Heileman Brewing Company Inc. and The Stroh Brewery Company, Their Successors and Assigns, for Use of Consumption in the Province of British Columbia	November 9, 1992	Injury

Table C-8**Tribunal Decisions Before the Federal Court of Canada as of March 31, 1993**

Case No.	Product	Federal Court No.
NQ-90-005	Carbon Steel Welded Pipe	A—774—91
NQ-91-007	Single Row Tapered Roller Bearings	A—981—92
NQ-92-002	Bicycles and Frames	A—1667—92

Table C-9

Tribunal Decisions Before a Binational Panel as of March 31, 1993

Case No.	Product	Binational Panel No.
NQ-91-006	Machine Tufted Carpeting	CDA—92—1904—02
NQ-92-004	Gypsum Board	CDA—93—1904—02

Table C-10

AD/CVD Decisions in Place as of March 31, 1993¹

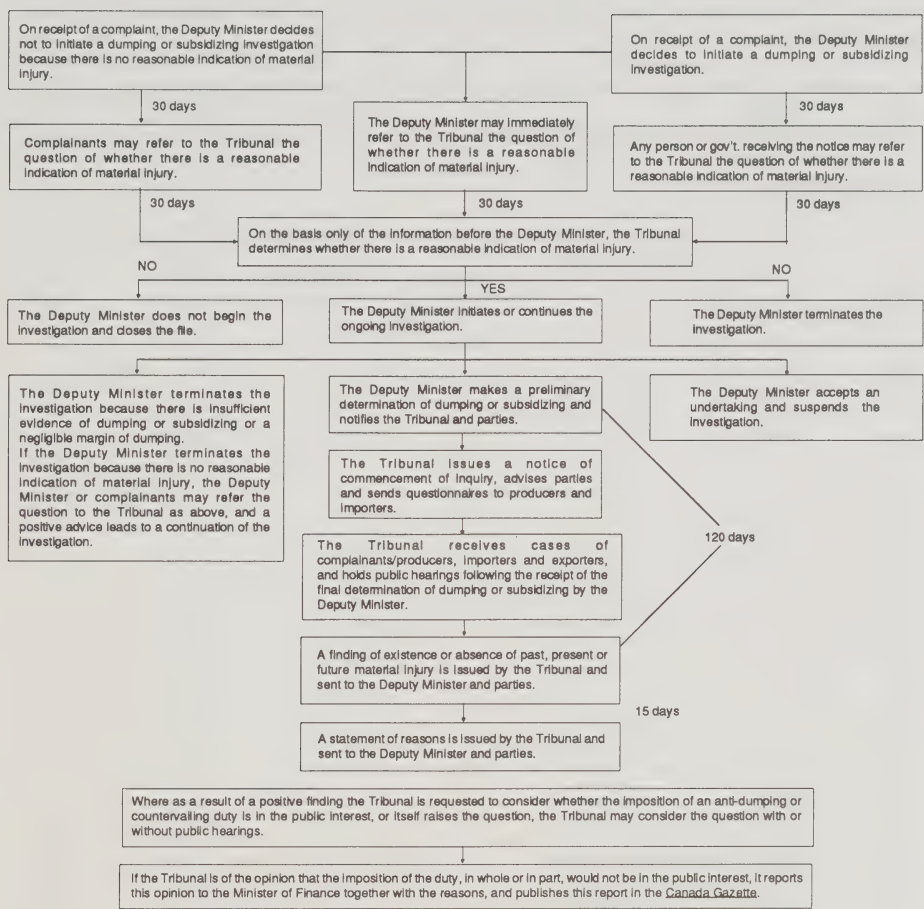
Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
R-9-88	November 24, 1988	Tillage Tools	Brazil	ADT-11-83 (December 28, 1983)
R-13-88	January 19, 1989	Paint Brushes	People's Republic of China	ADT-6-84 (June 20, 1984)
CIT-2-88	January 30, 1989	Sour Cherries	United States of America	
CIT-3-88	February 3, 1989	Apples	United States of America	
RR-89-003	March 16, 1990	Canned Ham and Canned Pork-Based Luncheon Meat	Denmark, the Netherlands and EEC	GlC-1-84 (August 7, 1984)
NQ-89-003	May 3, 1990	Women's Footwear	Brazil, People's Republic of China, Taiwan, Poland, Romania and Yugoslavia	
RR-89-008	June 5, 1990	Carbon Steel Welded Pipe	Republic of Korea	ADT-6-83 (June 28, 1983)
NQ-89-004	July 6, 1990	Refill Paper	Brazil	
RR-89-012	September 4, 1990	Photo Albums With Self-Adhesive Leaves and Self-Adhesive Leaves	Hong Kong, Republic of Korea, People's Republic of China, Singapore, Malaysia and Taiwan	ADT-4-74 (January 24, 1975) R-3-84 (August 24, 1984) CIT-18-84 (April 26, 1985) CIT-10-85 (February 14, 1986) CIT-5-87 (November 3, 1987)
RR-89-010	September 14, 1990	Potatoes for Use in British Columbia	United States of America	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986)
RR-89-013	October 10, 1990	Integral and Polyphase Induction Motors	United States of America, Brazil, Japan, Poland, Taiwan and United Kingdom	ADT-8R-78 (April 15, 1983) CIT-6-85 (October 11, 1985)

1. This table shows the decisions in place. To ascertain the precise product coverage, refer to the review no. or inquiry no. as identified in the first column of the table.

Table C-10 (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-90-003	January 2, 1991	Photo Albums With Self-Adhesive Leaves and Self-Adhesive Leaves	Thailand, Indonesia and the Philippines	
RR-90-005	June 10, 1991	Oil and Gas Well Casing	Republic of Korea and United States of America	CIT-15-85 (April 17, 1986)
RR-90-006	July 22, 1991	Subsidized Boneless Manufacturing Beef	EEC	CIT-2-86 (July 25, 1986)
NQ-90-005	July 26, 1991	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand and Venezuela	
NQ-91-001	September 5, 1991	Stainless Steel Welded Pipe	Taiwan	
NQ-91-002	October 2, 1991	Beer for Use in British Columbia	United States of America	
NQ-91-003	January 23, 1992	Carbon Steel Welded Pipe	Brazil	
NQ-91-004	February 7, 1992	Venetian Blinds	Sweden	
RR-91-003	February 25, 1992	Twisted Polypropylene and Nylon Rope	Republic of Korea	ADT-8-82 (October 7, 1982) R-6-B6 (February 17, 1987)
NQ-91-005	March 13, 1992	Toothpicks	United States of America	
NQ-91-006	April 21, 1992	Machine Tufted Carpeting	United States of America	
RR-91-004	May 22, 1992	Yellow Onions for Use in British Columbia	United States of America	CIT-1-87 (April 30, 1987)
RR-92-001	October 21, 1992	Waterproof Footwear	Czechoslovakia, Poland, Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and People's Republic of China	ADT-4-79 (May 25, 1979) ADT-2-82 (April 23, 1982) R-7-B7 (October 22, 1987)
NQ-92-001	November 30, 1992	Iceberg Lettuce for Use in British Columbia	United States of America	
NQ-92-002	December 11, 1992	Bicycles and Frames	Taiwan and People's Republic of China	
NQ-92-003	January 4, 1993	Cauliflower for Use in British Columbia	United States of America	
NQ-92-004	January 20, 1993	Gypsum Board	United States of America	
RR-92-003	February 25, 1993	Pocket Photo Albums and Refill Sheets	Japan, Republic of Korea, People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and Federal Republic of Germany	CIT-11-87 (February 26, 1988)

Diagram C-1
Dumping or Subsidizing Injury Inquiry



APPENDIX D — APPEALS

Table D-1

Appeal Decisions Rendered Under Section 67 (Formerly Section 47) of the *Customs Act*, Section 81.27 (Formerly Section 51.27) of the *Excise Tax Act*, Section 61 of SIMA and Section 18 of the *Softwood Lumber Products Export Charge Act* Between April 1, 1992, and March 31, 1993

Appeal No.	Appellant	Date of Decision	Decision
<i>Customs Act</i>			
AP-89-234	Douglas Anderson and Creed Evans	April 6, 1992	Allowed in Part
AP-90-075	Industrial Adhesives, Division of Timminco Ltd.	April 6, 1992	Dismissed
AP-91-150	IEC-Holden Inc.	April 28, 1992	Dismissed
AP-91-130	C.J. Michael Flavell	May 4, 1992	Allowed in Part
AP-89-151	Polygram Inc.	May 7, 1992	Dismissed
AP-89-165	Polygram Inc.	May 7, 1992	Dismissed
AP-90-138	Pigmalion Services	June 1, 1992	Allowed
AP-90-082	Lady Sandra of Canada Ltd.	June 2, 1992	Allowed in Part
2566	Unisys Canada Inc.	June 3, 1992	Allowed
AP-90-211	Philips Electronics Ltd.	June 15, 1992	Allowed
3100	GKN Birwelco Limited	June 16, 1992	Dismissed
2228	Agri-Tech Inc.	June 22, 1992	Dismissed
2229	Agri-Tech Inc.	June 22, 1992	Dismissed
2751	Agri-Tech Inc.	June 22, 1992	Dismissed
AP-91-110	Sandvik Rock Tools, A Division of Sandvik Canada Inc.	July 9, 1992	Allowed in Part
AP-91-138	Kenroc Tools Corporation	July 9, 1992	Dismissed
AP-91-132	Dumex Medical Surgical Products Ltd.	July 20, 1992	Allowed
AP-91-189	Nordic Laboratories Inc.	July 20, 1992	Dismissed
AP-90-166	Diamant Boart Trucco Ltd.	July 27, 1992	Allowed
AP-91-165	CallPro Canada Inc.	July 29, 1992	Allowed
AP-91-227	Soren Manufacturing Co. Ltd.	August 18, 1992	Dismissed
AP-90-121	Fleetguard International Corporation	August 25, 1992	Allowed in Part
AP-91-081	Oriental Trading (Mtl) Ltd.	August 31, 1992	Dismissed
AP-91-223	Oriental Trading (Mtl) Ltd.	August 31, 1992	Dismissed
AP-91-235	Jolly Jumper Inc.	September 14, 1992	Allowed

Table D-1 (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-91-157	D. Dyck Industries Limited	September 30, 1992	Allowed
AP-90-184	Abdulaziz Badrudin Harji	October 8, 1992	Dismissed
AP-91-269	Udisco Ltd.	October 28, 1992	Allowed
AP-90-209	Laclede Chain Manufacturing Co.	October 30, 1992	Dismissed
AP-91-019	Patrick H. Roche	November 18, 1992	Allowed
AP-91-006	Mil Davie Inc.	November 19, 1992	Dismissed
AP-92-025	Eileen M. Nielson	November 27, 1992	Allowed
AP-90-192	Black & Decker Canada Inc.	December 16, 1992	Dismissed
AP-92-015	Canadian Thermos Products Inc.	January 18, 1993	Dismissed
AP-91-180	Shrimp Projectors Inc.	January 26, 1993	Dismissed Lack of Jurisdiction
AP-91-122	Genesport Industries Ltd.	February 24, 1993	Dismissed
AP-92-032	R.G. Dobbin Sales Ltd.	March 1, 1993	Allowed
AP-92-018	Éditions Panini du Canada Ltée	March 19, 1993	Allowed

Excise Tax Act

AP-89-264	Alpha Fuels Limited	April 6, 1992	Allowed
AP-91-121	Essex Topcrop Sales Limited	April 6, 1992	Allowed
AP-91-134	Till-Fab Limited	April 6, 1992	Allowed in Part & Referred Back to Minister
AP-91-149	Airway Surgical Appliances Ltd.	April 10, 1992	Allowed
AP-90-257	Purdell, Coopérative Agro-alimentaire	April 14, 1992	Dismissed
AP-90-083	Ressources Média Inc.	April 27, 1992	Dismissed
AP-90-101	The Chocolate Messenger Ltd.	May 19, 1992	Allowed
AP-90-012	Pierre Roberge	May 19, 1992	Dismissed
AP-90-142	Les Carrières Ducharme Inc.	May 20, 1992	Allowed
AP-90-065	Life Skills Program Community Living Huntsville	May 28, 1992	Dismissed
AP-90-003	Beacon Christian High School	June 1, 1992	Allowed & Referred Back to Minister
AP-91-082	Suntech Optics Inc.	June 2, 1992	Dismissed
AP-90-144	Aviation Leclerc Inc.	June 8, 1992	Dismissed
AP-91-181	Vancouver Public Aquarium Association	June 8, 1992	Dismissed
AP-91-166	Vancouver Public Aquarium Association	June 8, 1992	Allowed in Part
AP-89-132	A.S. 4 Steel Industries Ltd.	June 11, 1992	Dismissed

Table D-1 (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-91-136	Epworth Truck Industries Limited	June 12, 1992	Dismissed
AP-90-143	Thunderchild Technical Institute Inc.	June 15, 1992	Allowed
*AP-91-115	Richmond Forest Products Ltd.	June 24, 1992	Allowed
AP-91-127	H & K Manufacturing Ltd.	June 26, 1992	Allowed & Referred Back to Minister
AP-91-078	Brigham Pipes Limited	July 6, 1992	Dismissed
AP-91-141	The Sheldon L. Kates Design Group Limited	July 20, 1992	Dismissed
AP-91-161	Bulk-Store Structures Inc.	July 20, 1992	Dismissed
AP-90-037	Tom Baird & Associates Limited	July 28, 1992	Allowed
AP-91-108	C.C. Color Corporation of Canada Ltd.	August 4, 1992	Dismissed
AP-91-221	H & H Forms Inc.	August 4, 1992	Dismissed
AP-91-184	Volkswagen Canada Inc.	August 10, 1992	Allowed in Part
AP-90-123	MCA (Canada) Ltd.	August 11, 1992	Allowed
AP-91-114	The Corporation of the City of Hamilton	August 11, 1992	Allowed in Part
AP-91-061	Label Tech, A Division of Primador Inc.	August 17, 1992	Allowed
AP-91-147	Tetra Pak Inc.	September 3, 1992	Allowed
AP-91-056	Oerus Corporation Ltd.	September 3, 1992	Dismissed
2798	M. Brown & Sons Limited	September 3, 1992	Dismissed
3078	Alrich Custom Cabinets Ltd.	September 8, 1992	Dismissed
AP-90-043	Total Graphics	September 8, 1992	Allowed
*AP-91-007	Seaboard Lumber Sales Company Limited	September 8, 1992	Allowed
AP-91-206	Techtouch Business Systems Ltd.	September 18, 1992	Allowed in Part
AP-91-171	J.S. Bal	September 23, 1992	Dismissed
2969	Duggan Fuels	September 30, 1992	Dismissed
*AP-91-212	Réal Grondin Inc.	September 30, 1992	Dismissed
AP-89-229	Laboratoires Delon Ltée	October 13, 1992	Dismissed
AP-91-236	315823 Ontario Limited T/A Storz Canada	October 13, 1992	Dismissed
AP-91-015	Solcan Ltd.	October 14, 1992	Dismissed
AP-91-186	Valleybrook Gardens Ltd.	October 19, 1992	Allowed
AP-91-155	Mackay Family Inc.	October 30, 1992	Dismissed
AP-91-216	Gulco International Limited	October 30, 1992	Dismissed
AP-90-078	Rieger Enterprises Inc., Stellaris Craft & Florist Supplies Division and Vista Scenic Hobby Products Division	November 3, 1992	Dismissed
AP-90-164	Kim Hutton	November 19, 1992	Dismissed

Table D-1 (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-91-260	Queensbury Video	November 19, 1992	Allowed in Part
AP-91-256	Brandon Forest Products Ltd.	December 1, 1992	Dismissed
AP-90-170	Les Équipements Frigma Inc.	December 8, 1992	Allowed
AP-91-229	A.J.V. Tools Ltd.	December 16, 1992	Allowed
AP-91-023	Lawson Mardon Group Limited	December 17, 1992	Allowed in Part
AP-91-024	Lawson Mardon Group Limited	December 17, 1992	Allowed
AP-92-047	Ngoc-Trieu Photolab 1-Hour	January 14, 1993	Allowed
AP-91-209	Harold K.G. Leach, D-Joe Signs	January 15, 1993	Allowed
AP-90-183	F.D. Jul Inc.	January 18, 1993	Allowed
AP-91-120	BASF Coatings & Inks Canada Ltd.	January 18, 1993	Allowed
AP-91-231	Right Way Auto Decor & Signs Ltd.	January 22, 1993	Allowed in Part & Referred Back to Minister
AP-91-213	J. & D. Trophies & Engraving	January 26, 1993	Allowed & Referred Back to Minister
AP-90-011	Power's Produce Ltd.	February 1, 1993	Dismissed
AP-91-261	Archer's Signs & Trophies	February 1, 1993	Allowed & Referred Back to Minister
AP-91-211	Oasis Gallery	February 8, 1993	Allowed
AP-92-044	Integ Services Ltd.	February 9, 1993	Dismissed
AP-90-243	Ed Markowski	February 11, 1993	Dismissed
AP-92-023	Scheel Window Limited	February 11, 1993	Dismissed
AP-90-239	Les Plastiques M.C. Ltée	February 24, 1993	Allowed
AP-91-094	595637 Ontario Ltd.	February 24, 1993	Dismissed
AP-91-214	MVP Trophies	February 26, 1993	Allowed
AP-91-258	Island Chemicals Distribution	February 26, 1993	Dismissed
AP-92-070	Thompson Bros. (Constr.) Ltd.	February 26, 1993	Dismissed
AP-92-012	Bert Henry (Kelowna) Limited	March 2, 1993	Dismissed
AP-92-059	Mustang Engineering and Construction Limited	March 2, 1993	Dismissed
AP-92-061	Nifty Ware Ltd.	March 2, 1993	Allowed
AP-91-268	Artland Gallery & Framing Inc.	March 4, 1993	Allowed
AP-91-047	BHP-Utah Mines Ltd.	March 19, 1993	Allowed
AP-91-109	18127 Alberta Ltd.	March 19, 1993	Dismissed
AP-91-185	Akos Development Corp.	March 19, 1993	Dismissed
AP-91-270	Empire Homes Ltd.	March 19, 1993	Dismissed
AP-92-002	P.R.E.P. Consulting Ltd.	March 19, 1993	Allowed

Table D-1 (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-92-056	Arc Industries - Community Living - South Huron	March 19, 1993	Dismissed
AP-92-067	Hypertec Systèmes Inc.	March 19, 1993	Allowed
AP-92-071	JIMBOB Rentals Ltd.	March 19, 1993	Dismissed
AP-92-021	Johnson & Johnson Inc.	March 31, 1993	Dismissed

SIMA

AP-91-172	Wilson Machine Co. Limited	June 25, 1992	Dismissed
AP-91-188	J.V. Marketing Inc.	September 1, 1992	Dismissed
AP-91-159	Canadian Footwear Programming Inc.	November 27, 1992	Allowed
AP-92-013	Sugi Canada Ltée	December 17, 1992	Dismissed
AP-90-023	Fletcher Leisure Group Inc.	March 19, 1993	Allowed & Referred Back to Minister
AP-90-127	Fletcher Leisure Group Inc.	March 19, 1993	Dismissed
AP-92-035	General Electric Canada Inc.	March 31, 1993	Allowed

Softwood Lumber Products Export Charge Act

*AP-91-115	Richmond Forest Products Ltd.	June 24, 1992	Allowed
*AP-91-007	Seaboard Lumber Sales Company Limited	September 8, 1992	Allowed
*AP-91-212	Réal Grondin Inc.	September 30, 1992	Dismissed

*Appeal heard under more than one act.

Table D-2

Appeals Heard Under Section 67 (Formerly Section 47) of the *Customs Act*, Section 81.19 (Formerly Sections 51.19 and 51.21) of the *Excise Tax Act* and Section 61 of SIMA Between April 1, 1992, and March 31, 1993, and Decisions Pending as of March 31, 1993

Appeal No.	Appellant	Date of Hearing
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Customs Act

AP-89-288	Exclusive Carpets Ltd.	February 18, 1993
AP-91-152	Gasparotto/Panontin	February 19, 1993
AP-91-183	Karl Hager Limb & Brace (Kelowna) Ltd.	November 5, 1992
AP-92-007	F.W. Woolworth Co. Ltd.	November 20, 1992
AP-92-022	John Martens Company	March 1, 1993
AP-92-087	Apotex Inc.	March 23, 1993
AP-92-096	Weil Company Limited	January 18, 1993
AP-92-105	Nygard International	February 17, 1993
AP-92-106	Peter Kanis	February 24, 1993
AP-92-110	Bionaire Inc.	February 10, 1993
AP-92-112	Praher Canada Products Ltd.	February 10, 1993
AP-92-121	The Marley Pump Company	February 15, 1993
AP-92-139	Takara Company Canada Limited	February 25, 1993
AP-92-151	Outils Royal Tools Corp.	March 1, 1993
AP-92-152	Procedair Industrie Inc.	March 2, 1993
AP-92-157	Consulac Architectural Product	March 2, 1993
AP-92-193	Radio Shack, A Division of Intertan	March 25, 1993
AP-92-194	National Geographic Society	March 26, 1993
AP-92-215	Radio Shack, A Division of Intertan	March 25, 1993

Excise Tax Act

AP-89-218	Sharp Electronics of Canada	January 12, 1993
AP-89-255	Canadian Garden Products Ltd.	February 15, 1993
AP-90-111	Mitel Corporation	September 9, 1992
AP-90-175	I.D. Foods Corporation	February 3, 1993
AP-90-177	I.D. Foods Corporation	February 3, 1993
AP-90-200	C.R. Plumbing Ltd.	March 15, 1993
AP-91-020	Edwin W. Russell	December 7, 1992

Table D-2 (cont'd)

Appeal No.	Appellant	Date of Hearing
AP-91-030	Paccar of Canada Ltd.	March 3, 1993
AP-91-031	D.J. Media Enterprises Ltd.	February 16, 1993
AP-91-077	Macmillan Bloedel Limited	December 9, 1992
AP-91-103	Quebecor Printing (Canada) Inc.	December 10, 1992
AP-91-104	Quebecor Publitech Inc.	December 10, 1992
AP-91-105	British American Bank Note Inc.	December 10, 1992
AP-91-106	British American Bank Note Inc.	December 10, 1992
AP-91-173	Pal-Bac Developments Limited	December 12, 1992
AP-91-187	Esselte Pendeflex Canada Inc.	March 22, 1993
AP-91-190	Via Rail Canada Inc.	March 8, 1993
AP-91-191	Via Rail Canada Inc.	March 8, 1993
AP-91-192	Via Rail Canada Inc.	March 8, 1993
AP-91-193	Via Rail Canada Inc.	March 8, 1993
AP-91-194	Via Rail Canada Inc.	March 8, 1993
AP-91-195	Via Rail Canada Inc.	March 8, 1993
AP-91-196	Via Rail Canada Inc.	March 8, 1993
AP-91-197	Via Rail Canada Inc.	March 8, 1993
AP-91-198	Via Rail Canada Inc.	March 8, 1993
AP-91-199	Via Rail Canada Inc.	March 8, 1993
AP-91-200	Via Rail Canada Inc.	March 8, 1993
AP-91-232	2284791 Manitoba Ltd.	February 18, 1993
AP-91-233	Ambience Gallery and Frames	November 6, 1992
AP-91-240	Northwest Wholesale Co. Ltd.	December 14, 1992
AP-91-267	John Clark Building Enterprises Limited	October 23, 1992
AP-92-004	Telav Inc.	January 20, 1993
AP-92-039	Brial Holdings Ltd.	November 5, 1992
AP-92-042	Electra Supply Inc.	February 4, 1993
AP-92-050	C.M.C.A. Limited	November 30, 1992
AP-92-051	Davron Forest Products Ltd.	December 7, 1992
AP-92-057	Rutherford Auto Sales Ltd.	December 7, 1992
AP-92-060	Renaissance Jewellery Inc.	December 15, 1992
AP-92-064	Walter H. Harmon (85) Ltd.	March 18, 1993
AP-92-068	Bio-Static Systems Ltd.	February 16, 1993
AP-92-072	Golden Bear Operating Company Ltd.	December 8, 1992

Table D-2 (cont'd)

Appeal No.	Appellant	Date of Hearing
AP-92-077	Glenan (Wholesale) Distributors Limited	January 8, 1993
AP-92-078	McDonald's Restaurants of Canada Limited	January 11, 1993
AP-92-086	W.G. Abrams Construction Specialties Ltd. HY-Power Coatings (Eastern Ontario)	January 12, 1993
AP-92-093	474245 Ontario Limited O/A Star Custom Concrete	January 14, 1993
AP-92-095	Canadian Thermos Products Inc.	January 15, 1993
AP-92-101	Alternate Solutions Division	February 24, 1993
AP-92-125	Artecal Exhibit and Displays	February 17, 1993
AP-92-128	Park City Products Limited	February 23, 1993
AP-92-130	Automatic Sprinkler Corporation of Canada Ltd.	March 24, 1993
AP-92-142	William J. Harmon	February 18, 1993
AP-92-143	Prairie West Industrial Ltd.	February 15, 1993
AP-92-145	Faurschou Farms Limited	February 15, 1993
AP-92-150	Josef-Ryan Diamonds	February 16, 1993
AP-92-187	395266 Ontario Limited O/A Focus	March 23, 1993
AP-92-190	Structural Tech Corporation Ltd.	March 24, 1993
AP-92-191	72303 Manitoba Ltd.	February 16, 1993

SIMA

AP-92-045	M & M Trading Inc.	February 19, 1993
AP-92-075	M & M Trading Inc.	February 19, 1993

Softwood Lumber Products Export Charge Act

AP-92-054	Falcon Lumber Limited	January 6, 1993
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Table D-3

Tribunal Decisions Before the Federal Court of Canada as of March 31, 1993

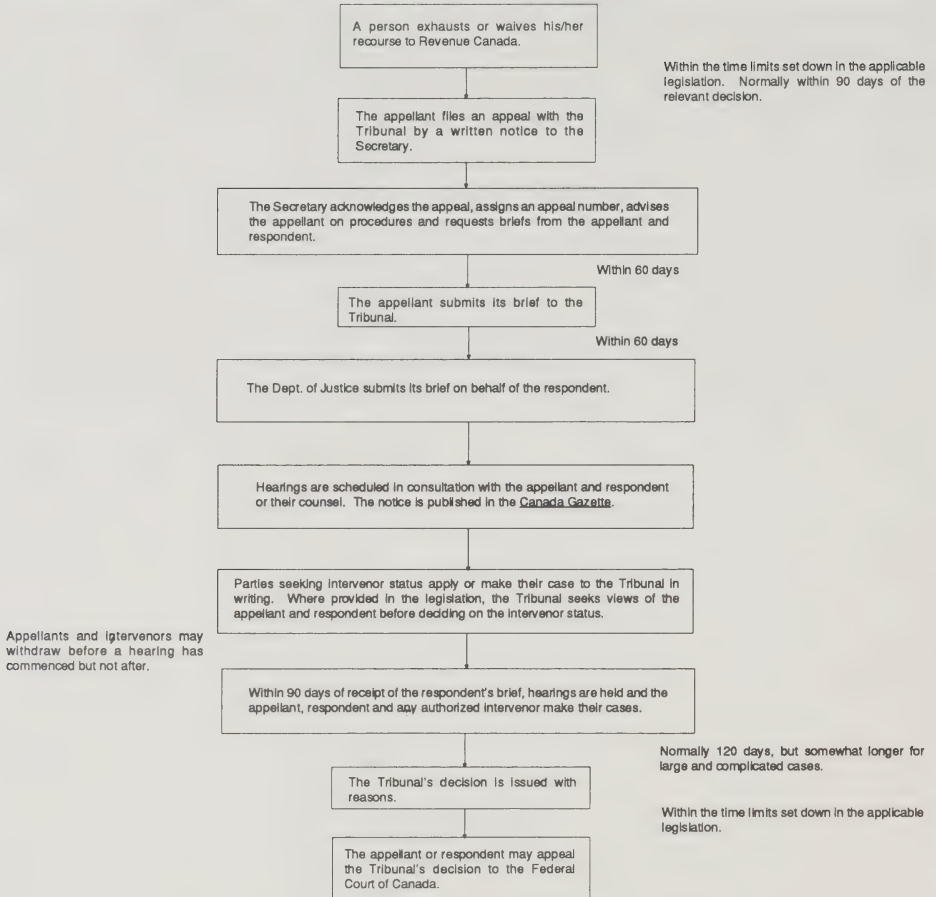
Appeal No.	Appellant	Federal Court No.
2374	Hydro-Québec	A—899—92
2925	Lovell Lighting Ltd.	T—2057—89
2940	Shaklee Canada Inc.	T—3012—90
2979	Sturdy Truck Body (1972) Limited	T—2218—89
2983	Les Industries Vogue Ltée	T—1270—92
3030	Grand Specialties Ltd. and The Perrier Group of Canada Inc.	T—496—91 T—495—91
3078	Alrich Custom Cabinets Ltd.	T—16—93
3095	Dentsply Canada Limited	T—2151—90
3107	Rova Products Canada Inc.	T—1722—92
AP-89-013	Hyalin International (1986) Inc.	T—1635—92
AP-89-027	Hussmann Store Equipment Limited	T—2382—90
AP-89-132	A.S. 4 Steel Industries Ltd.	T—2494—92
AP-89-234	Douglas Anderson and Creed Evans	A—3885—92
AP-90-002	Volkswagen Canada Inc.	T—98—92
AP-90-017	Sarto Plante Inc.	T—1739—92
AP-90-037	Tom Baird & Associates Limited	T—2869—92
AP-90-043	Total Graphics	T—25—93
AP-90-063	Cuisines A.C. Inc.	T—1097—91
AP-90-076	Kliwer's Cabinets Ltd.	T—1331—91
AP-90-117	Artéc Design Inc.	T—1556—92
AP-90-118	Seine River Cabinets Ltd.	T—1555—92
AP-90-123	MCA (Canada) Ltd.	T—2974—92
AP-90-138	Pigmalion Services	T—2166—92
AP-90-145	Guelph Paper Box Company Limited	T—1024—92
AP-91-007	Seaboard Lumber Sales Company Limited	T—24—93
AP-91-045	Imperial Cabinet (1980) Co. Ltd.	T—1557—92
AP-91-082	Suntech Optics Inc.	T—2387—92
AP-91-130	C.J. Michael Flavell	T—1944—92
AP-91-132	Dumex Medical Surgical Products Ltd.	T—111—93
AP-91-159	Canadian Footwear Programming Inc.	T—3098—92
AP-91-165	CallPro Canada Inc.	T—2583—92
AP-91-188	J.V. Marketing Inc.	A—1349—92
AP-91-206	Tehtouch Business Systems Ltd.	T—70—93

Table D-4**Tariff Board Decisions Before the Federal Court of Canada as of March 31, 1993**

Appeal No.	Appellant	Federal Court No.
955	Société Aptunion et al.	A—39—71
956	Blanc et al.	A—40—71
1546	Steinberg Inc. et al.	A—27—81
1546	Loblaws Ltd.	A—78—81
1611	Pioneer Pools Ltd.	A—210—83
1612	Mursatt Chemicals Ltd. (Intervenant) v. The Deputy Minister of National Revenue for Customs and Excise	A—211—83
1829	Polymer Technology Corporation	A—464—83
1875	Dufferin Materials & Construction et al.	A—443—83
1968	Allergan Inc.	A—463—83
2767	Three Buoys Houseboat Builders Ltd.	T—557—89
2812	Dalhousie University, Financial Services	T—1831—88

Diagram D-1

Appeal from a Customs and Excise Decision



APPENDIX E — ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

Table E-1

Inquiries Into Economic, Trade and Tariff-Related Matters Under Sections 18 and 19 of the CITT Act

Reference No.	Issue	Date of Report	Outcome
GC-91-001	An Inquiry Into the Allocation of Import Quotas	October 13, 1992	The Tribunal made recommendations on the optimum methods of import quota allocation for each of the products under study. For many of the products, the Tribunal recommended alternatives to the existing import quota allocation systems.
MN-91-001	Beer from the United States of America for Use or Consumption in the Province of British Columbia		Decision pending as of March 31, 1993.
GC-92-001	An Inquiry Into the Competitiveness of the Canadian Cattle and Beef Industries		The Tribunal expects to submit its report to the government by December 31, 1993.

Table E-2

Global Safeguard Inquiry — Safeguard Complaint Decision Issued Under Section 26 of the CITT Act

File No.	Product	Date of Decision	Decision
CP-92-001	Wide Flange Steel Shapes, Beams, Columns or Sections With a Total Out-to-Out Depth of Less Than 25 in. (i.e. the Depth Between the Outside Surface of the Flanges) to Include H-Beams, H-Piles, H-Bearing Piles, Bearing Piles; Miscellaneous Light Wide Flange Columns, Beams, and H-Beam Shapes; Parallel Flange Beams and Columns; Universal Beams, Columns and Bearing Piles; Broad Flange Beams and Shapes and Wide Flange Stanchions, With the Exception of Sections W4 x 4 in All Weights, W5 x 5 in All Weights, W6 x 4 x 9 lbs/ft. and Lighter, W8 x 4 x 10 lbs/ft. and Lighter, W10 x 4 x 12 lbs/ft. and Lighter, W12 x 4 x 16 lbs/ft. and Lighter, W12 x 12 x 170 lbs/ft. and Heavier, W12 x 13 x 210 lbs/ft. and Heavier, W14 x 16 in All Weights, W16 x 10¼ x 89 lbs/ft. and Heavier and W18 x 11 x 76 lbs/ft. and Heavier	August 24, 1992	The Tribunal concluded that it would not commence an inquiry, as the information before it did not disclose a reasonable indication that wide flange steel shapes were being imported into Canada in such increased quantities and under such conditions as to cause or threaten serious injury to Algoma.

Table E-3

GPT and CARIBCAN Safeguard Petition Decisions in Place as of March 31, 1993

Inquiry No. or Review No.	Product and/or Country	Tariff Item	Date of Tribunal Recommendation	Outcome
SP-10.1	Pneumatic Inner Tubes from the Republic of Korea	4013.10.00 or 4013.90.90	March 1, 1991	Order in Council will expire on June 30, 1994.
SR-91-001	Rubber Footwear		October 31, 1991	The withdrawal of the GPT should be extended until the scheduled expiry of the GPT program on June 30, 1994.

Diagram E-1
Import Safeguard Complaint by Canadian Producers

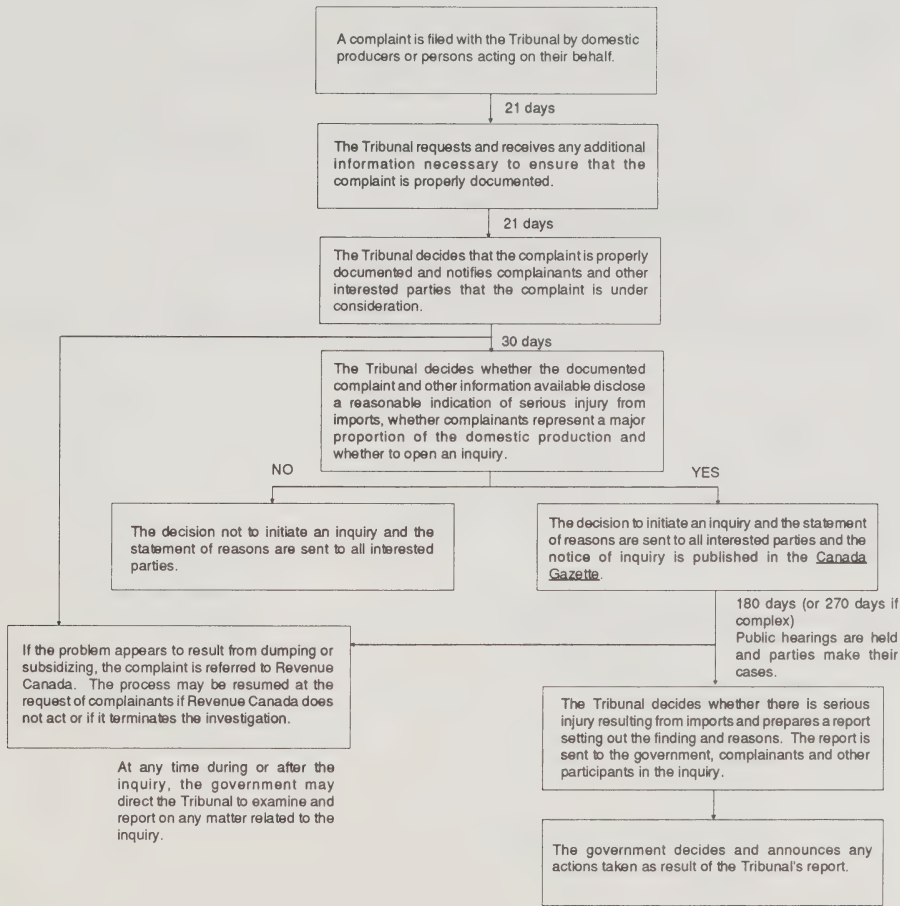
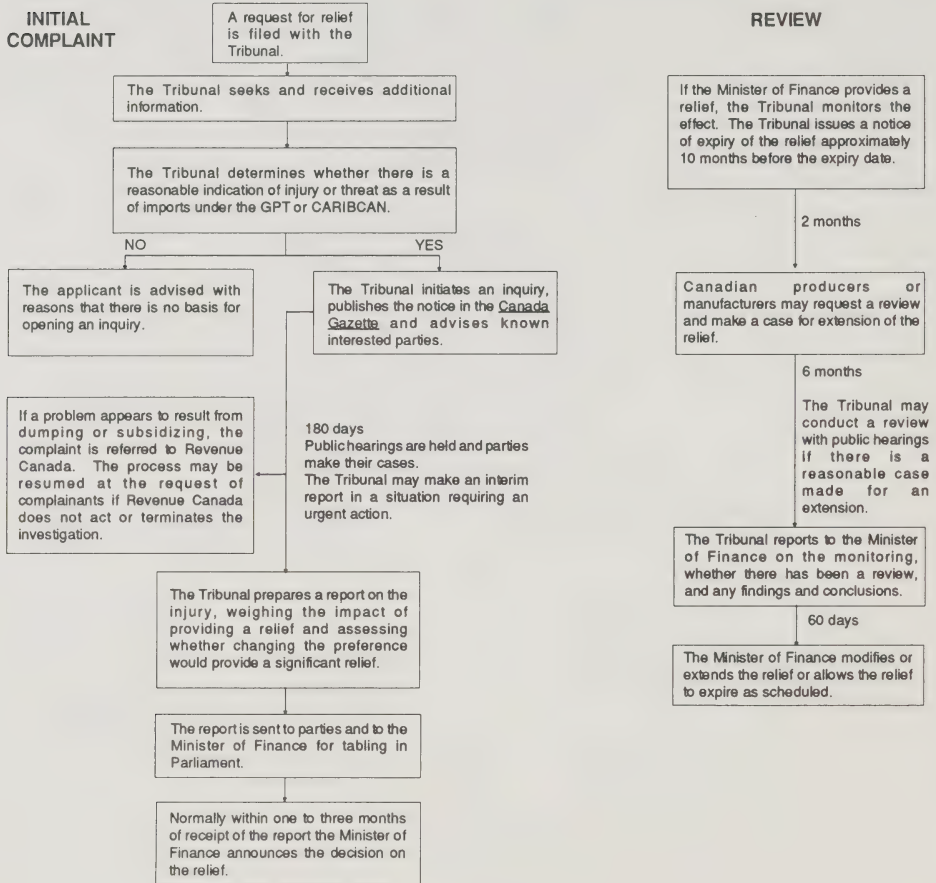


Diagram E-2

Import Safeguard Complaint by Canadian Producers Concerning the GPT or CARIBCAN



APPENDIX F

Publications in Fiscal Year 1992-93

- May 1992 - An Introduction to the Canadian International Trade Tribunal; Remarks by John C. Coleman to the Canadian Bar Association, Ontario Section, Toronto, May 14, 1992
- June 1992 - Annual Report for the Fiscal Year Ending March 31, 1992
- October 1992 - 1. An Inquiry into the Allocation of Import Quotas
2. Achieving Greater Transparency in Trade: Remarks Prepared for the UNCTAD Board's Special Session on "National Transparent Mechanisms," October 1 and 2, 1992, by John C. Coleman
- March 1993 - Trade Remedies: Where Have We Been? Where Are We Going? Remarks by John C. Coleman to the Canadian Importers Association Anti-Dumping and Countervailing Conference, Toronto, March 24, 1993
- Bulletin - Vol. 4, Nos. 1 - 6

A series of pamphlets designed to inform the public of the work of the Tribunal are also available. Pamphlets in the series include:

- Introduction to the Canadian International Trade Tribunal
 - Appeals from Customs and Excise Decisions
 - Dumping and Subsidizing Injury Inquiries
 - Import Safeguard Complaints by Domestic Producers
 - Import Safeguard Complaints Concerning the General Preferential Tariff (GPT) or CARIBCAN
 - General Inquiries into Economic, Trade and Tariff Matters
-

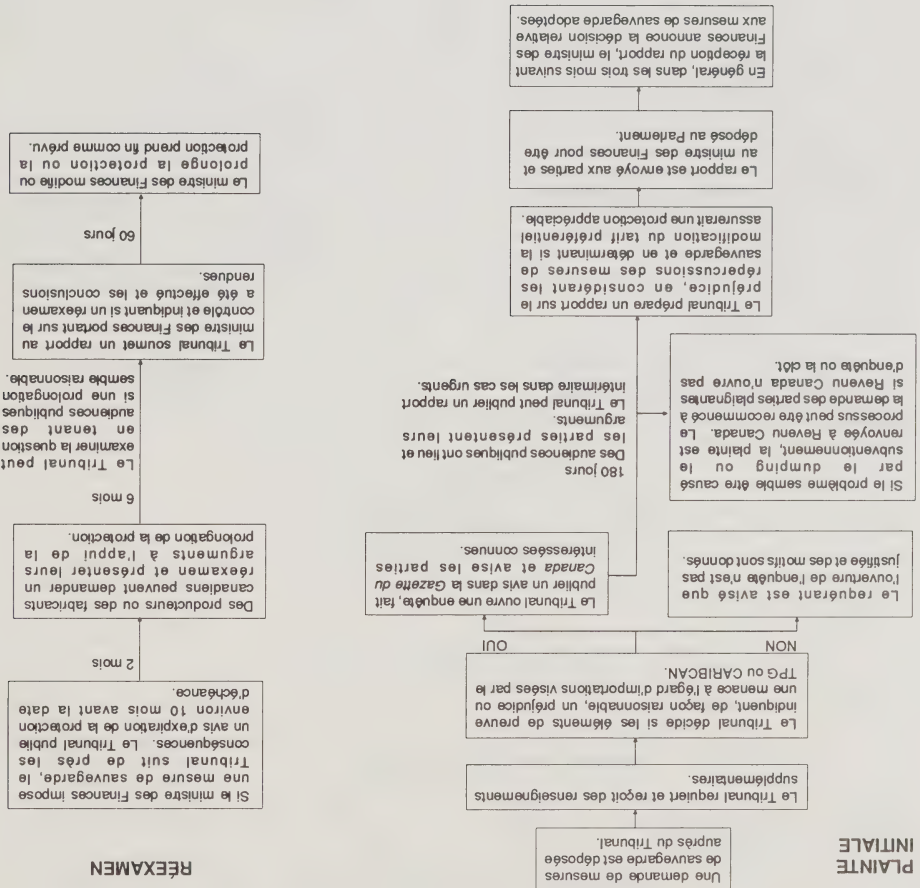
Publications can be obtained through the Tribunal by contacting the Secretary, Canadian International Trade Tribunal, 365 Laurier Avenue West, Journal Tower South, Ottawa, Ontario K1A 0G7 (613) 993-3595.

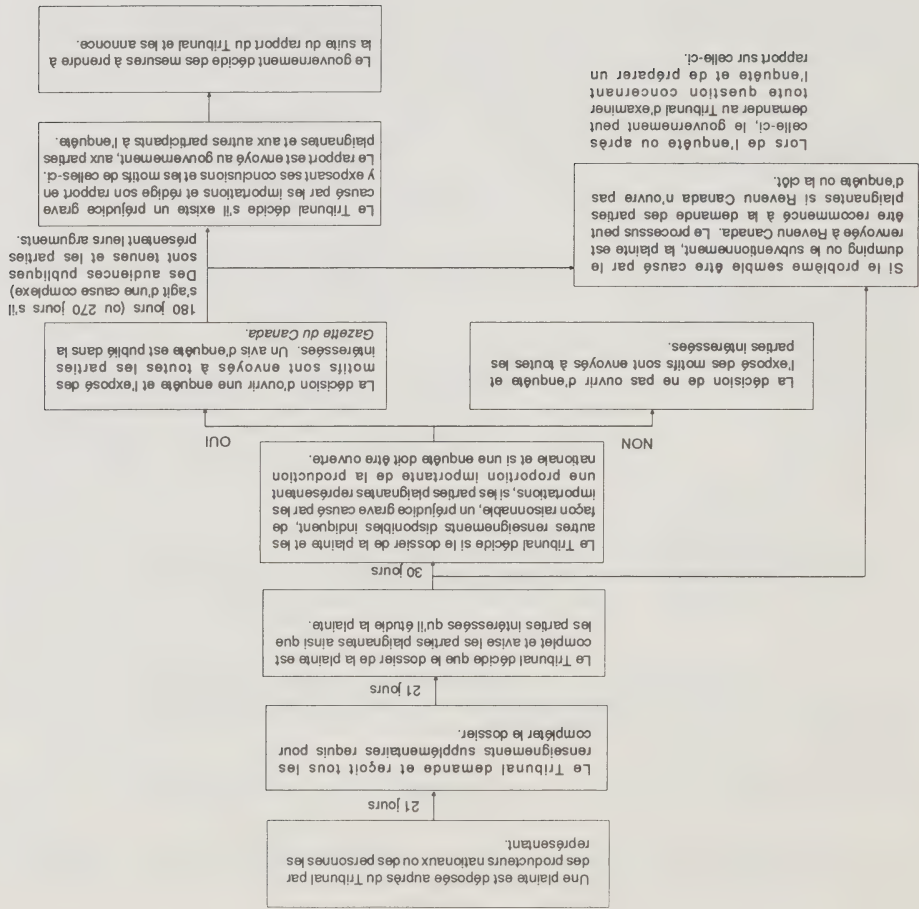
Publications pendant l'exercice 1992-1993

Mai 1992 -	<i>An Introduction to the Canadian International Trade Tribunal</i> , observations faites par M. John C. Coleman devant la section ontarienne de l'Association du Barreau canadien, Toronto, le 14 mai 1992.
Juin 1992 -	Rapport annuel pour l'exercice se terminant le 31 mars 1992
Octobre 1992 -	1. Une enquête sur la répartition des contingents d'importation spéciale de la CNUCED qui portait sur « Les mécanismes transparents au niveau national », les 1 ^{er} et 2 octobre 1992
Mars 1993 -	<i>Trade Remedies: Where Have We Been? Where Are We Going?</i> Observations faites par M. John C. Coleman lors de la Conférence de l'Association des importateurs canadiens portant sur les droits antidumping et compensateurs, Toronto, le 24 mars 1993
Bulletin -	Vol. 4, n° 1 - 6

Une série de publications visant à informer le public sur le travail du Tribunal sont également disponibles. Les publications suivantes font partie de cette série :

- Introduction au Tribunal canadien du commerce extérieur
- Appels de décisions rendues par Douanes et Accise
- Enquêtes concernant le préjudice causé par le dumping et le subventionnement
- Plaintes par les producteurs nationaux demandant des mesures de protection contre les importations
- Plaintes demandant des mesures de protection contre les importations visées par le Tarif de préférence général (TPG) ou le CARIBCAN
- Enquêtes générales sur les questions économiques, commerciales et tarifaires





Décisions à l'égard des demandes de mesures de sauvegarde contre le TPG ou le CARIBCAN en vigueur au 31 mars 1993

Enquête n° ou réexamen n°	Produit ou pays	Numéro tarifaire	Date des recom-mandations du Tribunal	Résultat
SP10.1	Chambres à air pneumatiques de la République de Corée	4013.10.00 ou 4013.90.90	Le 1 ^{er} mars 1991	Le décret expirera le 30 juin 1994.
SR-91-001	Chaussures en caoutchouc		Le 31 octobre 1991	Le retrait du TPG devrait être prolongé jusqu'à la date prévue d'expiration du programme du TPG, soit le 30 juin 1994.

ANNEXE E — ENQUÊTES SUR LES QUESTIONS ÉCONOMIQUES, COMMERCIALES ET TARIFAIRES, ET LES MESURES DE SAUVEGARDE

Tableau E-1

Enquêtes concernant des questions de nature économique, commerciale et tarifaire aux termes des articles 18 et 19 de la Loi sur le TCCE

Saisine n°	Produit	Date du rapport	Résultat
GC-91-001	Enquête sur la répartition des contingents d'importation	Le 13 octobre 1992	Le Tribunal a formulé ses recommandations sur les meilleures méthodes de répartition des contingents à l'importation relativement à chaque produit qui avait fait l'objet de l'enquête. Dans le cas de beaucoup de ces produits, le Tribunal a recommandé des solutions de rechange aux systèmes actuels de répartition des contingents d'importation.
MN-91-001	Bière des États-Unis d'Amérique pour utilisation ou consommation dans la province de la Colombie-Britannique	Décision en instance au 31 mars 1993	
GC-92-001	Enquête sur la compétitivité des industries canadiennes de l'élevage des bovins et de la transformation du bœuf	Le Tribunal prévoit soumettre son rapport au gouvernement d'ici le 31 décembre 1993.	

Tableau E-2

Enquête sur les mesures de sauvegarde globales — Décision rendue aux termes de l'article 26 de la Loi sur le TCCE à l'égard d'une plainte visant des mesures de sauvegarde

Dossier n°	Produit	Date de la décision	Décision
CP-92-001	Profilés, poutres, colonnes ou tronçons en acier à larges ailes ayant une épaisseur de part en part de moins de 25 po (c'est-à-dire l'épaisseur entre les surfaces extérieures des ailes), y compris les poutres en double T, les pieux en double T, les pieux porteurs en double T et les pieux porteurs; diverses colonnes et poutres légères et divers profilés de poutres légères en double T à larges ailes; poutres et colonnes à ailes parallèles; poutres, colonnes et pieux porteurs universels; poutres, profilés et montants à larges ailes, à l'exception des tronçons L4 x 4 de tous les poids, L5 x 5 de tous les poids, L6 x 4 x 9 lb/pi et moins, L8 x 4 x 10 lb/pi et moins, L10 x 4 x 12 lb/pi et moins, L12 x 4 x 16 lb/pi et moins, L12 x 12 x 170 lb/pi et plus, L16 x 10 1/4 x 89 lb/pi et plus et L18 x 11 x 76 lb/pi et plus	Le 24 août 1992	Le Tribunal a déclaré qu'il n'aurait pas d'enquête parce que les renseignements dont il a pris connaissance n'indiquaient pas de façon raisonnable que l'importation des profilés à larges ailes se faisait en quantités tellement accrues et à des conditions telles qu'elle causait ou menaçait de causer un préjudice grave à Algoma.

Organigramme D-1
Appel d'une décision rendue par Douanes et Accise

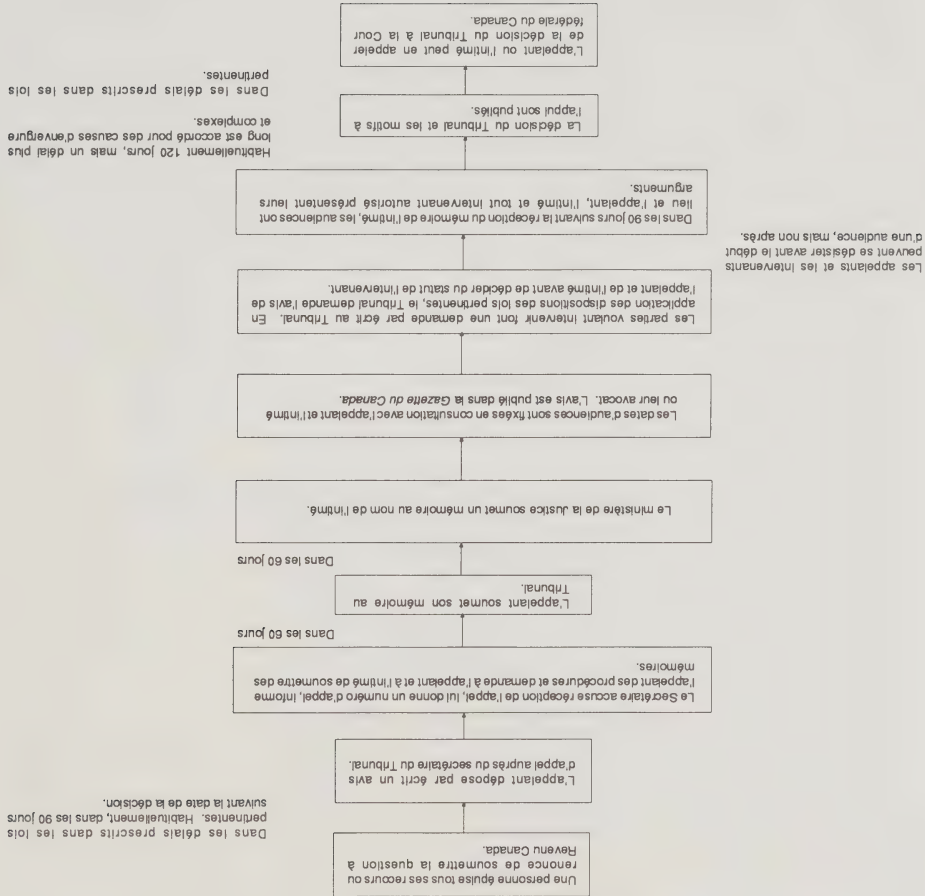


Tableau D-4
 Décisions de la Commission du tarif devant la Cour fédérale du Canada au 31 mars 1993

Appel n°	Appelant	Cour fédérale n°
955	Société Aptunion et al.	A-39-71
956	Blanc et al.	A-40-71
1546	Steinberg Inc. et al.	A-27-81
1546	Loblaws Ltd.	A-78-81
1611	Pioneer Pools Ltd.	A-210-83
1612	Mursatt Chemicals Ltd. (Intervenant) c. Le sous-ministre du Revenu national pour les douanes et l'accise	A-211-83
1829	Polymer Technology Corporation	A-464-83
1875	Dufferin Materials & Construction et al.	A-443-83
1968	Allergan Inc.	A-463-83
2767	Three Buoys Houseboat Builders Ltd.	T-557-89
2812	Dalhousie University, Financial Services	T-1831-88

Tableau D-3

Décisions du Tribunal devant la Cour fédérale du Canada au 31 mars 1993

Appel n°	Appelant	Cour fédérale n°
2374	Hydro-Québec	A-899-92
2925	Lovell Lighting Ltd.	T-2057-89
2940	Shaklee Canada Inc.	T-3012-90
2979	Sturdy Truck Body (1972) Limited	T-2218-89
2983	Les Industries Vogue Ltée	T-1270-92
3030	Grand Spécialties Ltd. et The Perrier Group of Canada Inc.	T-496-91 T-495-91
3078	Airch Custom Cabinets Ltd.	T-16-93
3095	Dentisply Canada Limited	T-2151-90
3107	Fova Products Canada Inc.	T-1722-92
AP-89-013	Hyalin International (1986) Inc.	T-1635-92
AP-89-027	Hussmann Store Equipment Limited	T-2382-90
AP-89-132	A.S. 4 Steel Industries Ltd.	T-2494-92
AP-89-234	Douglas Anderson and Creed Evans	A-3885-92
AP-90-002	Volkswagen Canada Inc.	T-98-92
AP-90-017	Sarto Plante Inc.	T-1739-92
AP-90-037	Tom Baird & Associates Limited	T-2869-92
AP-90-043	Total Graphics	T-25-93
AP-90-063	Cuishines A.C. Inc.	T-1097-91
AP-90-076	Kliwer's Cabinets Ltd.	T-1331-91
AP-90-117	Artrec Design Inc.	T-1556-92
AP-90-118	Seine River Cabinets Ltd.	T-1555-92
AP-90-123	MCA (Canada) Ltd.	T-2974-92
AP-90-138	Pigmalion Services	T-2166-92
AP-90-145	Gueph Paper Box Company Limited	T-1024-92
AP-91-007	Seaboard Lumber Sales Company Limited	T-24-93
AP-91-045	Imperial Cabinet (1980) Co. Ltd.	T-1557-92
AP-91-082	Suntech Optics Inc.	T-2387-92
AP-91-130	C.J. Michael Flavell	T-1944-92
AP-91-132	Dumex Medical Surgical Products Ltd.	T-111-93
AP-91-159	Canadian Footwear Programming Inc.	T-3098-92
AP-91-165	CalPro Canada Inc.	T-2583-92
AP-91-188	J.V. Marketing Inc.	A-1349-92
AP-91-206	Touch Business Systems Ltd.	T-70-93

Tableau D-2 (suite)

Appel n°	Appellant	Date de l'audience
AP-92-072	Golden Bear Operating Company Ltd.	Le 8 décembre 1992
AP-92-077	Glean (Wholesale) Distributors Limited	Le 8 janvier 1993
AP-92-078	Les Restaurants McDonald du Canada Limitée	Le 11 janvier 1993
AP-92-086	W.G. Abrams Construction Specialties Ltd. HY-Power Coatings (Eastern Ontario)	Le 12 janvier 1993
AP-92-093	474245 Ontario Limited O/A Star Custom Concrete	Le 14 janvier 1993
AP-92-095	Canadian Thermos Products Inc.	Le 15 janvier 1993
AP-92-101	Alternate Solutions Division	Le 24 février 1993
AP-92-125	Artecal Exhibit and Displays	Le 17 février 1993
AP-92-128	Park City Products Limited	Le 23 février 1993
AP-92-130	Automatic Sprinkler Corporation of Canada Ltd.	Le 24 mars 1993
AP-92-142	William J. Harmon	Le 18 février 1993
AP-92-143	Prairie West Industrial Ltd.	Le 15 février 1993
AP-92-145	Faurschou Farms Limited	Le 15 février 1993
AP-92-150	Josef-Ryan Diamonds	Le 16 février 1993
AP-92-187	395266 Ontario Limited O/A Focus	Le 23 mars 1993
AP-92-190	Structural Tech Corporation Ltd.	Le 24 mars 1993
AP-92-191	72303 Manitoba Ltd.	Le 16 février 1993
La LMSI		
AP-92-045	M & M Trading Inc.	Le 19 février 1993
AP-92-075	M & M Trading Inc.	Le 19 février 1993
Loi sur le droit à l'exportation de produits de bois d'oeuvre		
AP-92-054	Falcon Lumber Limited	Le 6 janvier 1993

Tableau D-2 (suite)

Appel n°	Appelant	Date de l'audience
AP-91-020	Edwin W. Russell	Le 7 décembre 1992
AP-91-030	Paccar of Canada Ltd.	Le 3 mars 1993
AP-91-031	D.J. Media Enterprises Ltd.	Le 16 février 1993
AP-91-077	Macmillan Bloedel Limited	Le 9 décembre 1992
AP-91-103	Quebecor Printing (Canada) Inc.	Le 10 décembre 1992
AP-91-104	Quebecor Publittech Inc.	Le 10 décembre 1992
AP-91-105	British American Bank Note Inc.	Le 10 décembre 1992
AP-91-106	British American Bank Note Inc.	Le 10 décembre 1992
AP-91-173	Pal-Bac Developments Limited	Le 12 décembre 1992
AP-91-187	Esselte Pendelflex Canada Inc.	Le 22 mars 1993
AP-91-190	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-191	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-192	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-193	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-194	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-195	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-196	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-197	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-198	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-199	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-200	Via Rail Canada Inc.	Le 8 mars 1993
AP-91-232	2284791 Manitoba Ltd.	Le 18 février 1993
AP-91-233	Ambience Gallery and Frames	Le 6 novembre 1992
AP-91-240	Northwest Wholesale Co. Ltd.	Le 14 décembre 1992
AP-91-267	John Clark Building Enterprises Limited	Le 23 octobre 1992
AP-92-004	Telav Inc.	Le 20 janvier 1993
AP-92-039	Bral Holdings Ltd.	Le 5 novembre 1992
AP-92-042	Electra Supply Inc.	Le 4 février 1993
AP-92-050	C.M.C.A. Limited	Le 30 novembre 1992
AP-92-051	Davron Forest Products Ltd.	Le 7 décembre 1992
AP-92-057	Rutherford Auto Sales Ltd.	Le 7 décembre 1992
AP-92-060	Renaissance Jewellery Inc.	Le 15 décembre 1992
AP-92-064	Walter H. Harmon (85) Ltd.	Le 18 mars 1993
AP-92-068	Bio-Static Systems Ltd.	Le 16 février 1993

Tableau D-2

Appels entendus aux termes de l'article 67 (anciennement l'article 47) de la *Loi sur les douanes*, l'article 81.19 (anciennement les articles 51.19 et 51.21) de la *Loi sur la taxe d'accise* et l'article 61 de la LMSI entre le 1^{er} avril 1992 et le 31 mars 1993 et dont les décisions n'ont toujours pas été rendues au 31 mars 1993

Appel n°	Appelant	Date de l'audience
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Loi sur les douanes

AP-89-288	Exclusive Carpets Ltd.	Le 18 février 1993
AP-91-152	Gasparotto/Panontin	Le 19 février 1993
AP-91-183	Karl Hager Limb & Brace (Kelowna) Ltd.	Le 5 novembre 1992
AP-92-007	F.W. Woolworth Co. Ltd.	Le 20 novembre 1992
AP-92-022	John Martens Company	Le 1 ^{er} mars 1993
AP-92-087	Apotex Inc.	Le 23 mars 1993
AP-92-096	Well Company Limited	Le 18 janvier 1993
AP-92-105	Nygard International	Le 17 février 1993
AP-92-106	Peter Kanis	Le 24 février 1993
AP-92-110	Bionaire Inc.	Le 10 février 1993
AP-92-112	Praher Canada Products Ltd.	Le 10 février 1993
AP-92-121	The Marley Pump Company	Le 15 février 1993
AP-92-139	Takara Company Canada Limited	Le 25 février 1993
AP-92-151	Ouliss Royal Tools Corp.	Le 1 ^{er} mars 1993
AP-92-152	Procedair Industrie Inc.	Le 2 mars 1993
AP-92-157	Consulac Architectural Product	Le 2 mars 1993
AP-92-193	Radio Shack, A Division of Interlan	Le 25 mars 1993
AP-92-194	National Geographic Society	Le 26 mars 1993
AP-92-215	Radio Shack, A Division of Interlan	Le 25 mars 1993

Loi sur la taxe d'accise

AP-89-218	Sharp Electronics of Canada	Le 12 janvier 1993
AP-89-255	Canadian Garden Products Ltd.	Le 15 février 1993
AP-90-111	Miller Corporation	Le 9 septembre 1992
AP-90-175	I.D. Foods Corporation	Le 3 février 1993
AP-90-177	I.D. Foods Corporation	Le 3 février 1993
AP-90-200	C.R. Plumbing Ltd.	Le 15 mars 1993

Tableau D-1 (suite)

Appel n°	Appelant	Date de la décision	Décision
AP-91-047	BHP-Utah Mines Ltd.	Le 19 mars 1993	Admis
AP-91-109	18127 Alberta Ltd.	Le 19 mars 1993	Rejeté
AP-91-185	Akos Development Corp.	Le 19 mars 1993	Rejeté
AP-91-270	Empire Homes Ltd.	Le 19 mars 1993	Rejeté
AP-92-002	P.H.E.P. Consulting Ltd.	Le 19 mars 1993	Admis
AP-92-056	Arc Industries - Community Living - South Huron	Le 19 mars 1993	Rejeté
AP-92-067	Hypertec Systèmes Inc.	Le 19 mars 1993	Admis
AP-92-071	JIMBOB Rentals Ltd.	Le 19 mars 1993	Rejeté
AP-92-021	Johnson & Johnson Inc.	Le 31 mars 1993	Rejeté

La LMSI

AP-91-172	Wilson Machine Co. Limited	Le 25 juin 1992	Rejeté
AP-91-188	J.V. Marketing Inc.	Le 1 ^{er} septembre 1992	Rejeté
AP-91-159	Canadian Footwear Programming Inc.	Le 27 novembre 1992	Admis
AP-92-013	Sugl Canada Ltée	Le 17 décembre 1992	Rejeté
AP-90-023	Fletcher Leisure Group Inc.	Le 19 mars 1993	Admis & renvoyé au Ministre
AP-90-127	Fletcher Leisure Group Inc.	Le 19 mars 1993	Rejeté
AP-92-035	Générale électrique du Canada Inc.	Le 31 mars 1993	Admis

Loi sur le droit à l'exportation de produits de bois d'œuvre

*AP-91-115	Richmond Forest Products Ltd.	Le 24 juin 1992	Admis
*AP-91-007	Seaboard Lumber Sales Company Limited	Le 8 septembre 1992	Admis
*AP-91-212	Réal Grondin Inc.	Le 30 septembre 1992	Rejeté

*Appel entendu aux termes de plus d'une loi.

Tableau D-1 (suite)

Appel n°	Appelant	Date de la décision	Décision
AP-90-078	Rieger Enterprises Inc., Division Steilians Craft & Florist Supplies et Division Vista Scenic Hobby Products	Le 3 novembre 1992	Rejeté
AP-90-164	Kim Hutton	Le 19 novembre 1992	Rejeté
AP-91-260	Queensbury Video	Le 19 novembre 1992	Admis en partie
AP-91-256	Brandon Forest Products Ltd.	Le 1 ^{er} décembre 1992	Rejeté
AP-90-170	Les Équipements Frigma Inc.	Le 8 décembre 1992	Admis
AP-91-229	A.J.V. Tools Ltd.	Le 16 décembre 1992	Admis
AP-91-023	Lawson Mardon Group Limited	Le 17 décembre 1992	Admis en partie
AP-91-024	Lawson Mardon Group Limited	Le 17 décembre 1992	Admis
AP-92-047	Ngoc-Trieu Photolab 1-Hour	Le 14 janvier 1993	Admis
AP-91-209	Harold K.G. Leach, D-Joe Signs	Le 15 janvier 1993	Admis
AP-90-183	F.D. Jul Inc.	Le 18 janvier 1993	Admis
AP-91-120	BASF Coatings & Inks Canada Ltd.	Le 18 janvier 1993	Admis
AP-91-231	Right Way Auto Decor & Signs Ltd.	Le 22 janvier 1993	Admis en partie & renvoyé au Ministre
AP-91-213	J. & D. Trophies & Engraving	Le 26 janvier 1993	Admis & renvoyé au Ministre
AP-90-011	Power's Produce Ltd.	Le 1 ^{er} février 1993	Rejeté
AP-91-261	Archer's Signs & Trophies	Le 1 ^{er} février 1993	Admis & renvoyé au Ministre
AP-91-211	Oasis Gallery	Le 8 février 1993	Admis
AP-92-044	Integ Services Ltd.	Le 9 février 1993	Rejeté
AP-90-243	Ed Markowski	Le 11 février 1993	Rejeté
AP-92-023	Scheel Window Limited	Le 11 février 1993	Rejeté
AP-90-239	Les Plastiques M.C. Lié	Le 24 février 1993	Admis
AP-91-094	595637 Ontario Ltd.	Le 24 février 1993	Rejeté
AP-91-214	MVP Trophies	Le 26 février 1993	Admis
AP-91-258	Island Chemicals Distribution	Le 26 février 1993	Rejeté
AP-92-070	Thompson Bros. (Constr.) Ltd.	Le 26 février 1993	Rejeté
AP-92-012	Bert Henry (Kelowna) Limited	Le 2 mars 1993	Rejeté
AP-92-059	Mustang Engineering and Construction Limited	Le 2 mars 1993	Rejeté
AP-92-061	Nifty Ware Ltd.	Le 2 mars 1993	Admis
AP-91-268	Artland Gallery & Framing Inc.	Le 4 mars 1993	Admis

Appel n°	Appelant	Date de la décision	Décision
AP-89-132	A.S. 4 Steel Industries Ltd.	Le 11 juin 1992	Rejeté
AP-91-136	Epworth Truck Industries Limited	Le 12 juin 1992	Rejeté
AP-90-143	Thunderchild Technical Institute Inc.	Le 15 juin 1992	Admis
*AP-91-115	Richmond Forest Products Ltd.	Le 24 juin 1992	Admis
AP-91-127	H & K Manufacturing Ltd.	Le 26 juin 1992	Admis & renvoyé au Ministre
AP-91-078	Brigham Pipes Limited	Le 6 juillet 1992	Rejeté
AP-91-141	The Sheldon L. Kates Design Group Limited	Le 20 juillet 1992	Rejeté
AP-91-161	Bulk-Store Structures Inc.	Le 20 juillet 1992	Rejeté
AP-90-037	Tom Baird & Associates Limited	Le 28 juillet 1992	Admis
AP-91-108	G.C. Color Corporation of Canada Ltd.	Le 4 août 1992	Rejeté
AP-91-221	H & H Forms Inc.	Le 4 août 1992	Rejeté
AP-91-184	Volkswagen Canada Inc.	Le 10 août 1992	Admis en partie
AP-90-123	MCA (Canada) Ltd.	Le 11 août 1992	Admis
AP-91-114	The Corporation of the City of Hamilton	Le 11 août 1992	Admis en partie
AP-91-061	Label Tech, A Division of Primador Inc.	Le 17 août 1992	Admis
AP-91-147	Tetra Pak Inc.	Le 3 septembre 1992	Admis
AP-91-056	Cerus Corporation Ltd.	Le 3 septembre 1992	Rejeté
2798	M. Brown & Sons Limited	Le 3 septembre 1992	Rejeté
3078	Alrich Custom Cabinets Ltd.	Le 8 septembre 1992	Rejeté
AP-90-043	Total Graphics	Le 8 septembre 1992	Admis
*AP-91-007	Seaboard Lumber Sales Company Limited	Le 8 septembre 1992	Admis
AP-91-206	Technouch Business Systems Ltd.	Le 18 septembre 1992	Admis en partie
AP-91-171	J.S. Bal	Le 23 septembre 1992	Rejeté
2969	Duggan Fuels	Le 30 septembre 1992	Rejeté
*AP-91-212	Réal Groudin Inc.	Le 30 septembre 1992	Rejeté
AP-89-229	Laboratoires Delon Ltée	Le 13 octobre 1992	Rejeté
AP-91-236	315823 Ontario Limited S/N Storz Canada	Le 13 octobre 1992	Rejeté
AP-91-015	Solcan Ltd.	Le 14 octobre 1992	Rejeté
AP-91-186	Valleybrook Gardens Ltd.	Le 19 octobre 1992	Admis
AP-91-155	Mackay Family Inc.	Le 30 octobre 1992	Rejeté
AP-91-216	Guilco International Limited	Le 30 octobre 1992	Rejeté

Tableau D-1 (suite)

Appel n°	Appelant	Date de la décision	Décision
AP-91-157	D. Dyck Industries Limited	Le 30 septembre 1992	Admis
AP-90-184	Abdulaziz Badrudin Harji	Le 8 octobre 1992	Rejeté
AP-91-269	Udisco Ltd.	Le 28 octobre 1992	Admis
AP-90-209	Laclede Chain Manufacturing Co.	Le 30 octobre 1992	Rejeté
AP-91-019	Patrick H. Roche	Le 18 novembre 1992	Admis
AP-91-006	Mill Davie Inc.	Le 19 novembre 1992	Rejeté
AP-92-025	Eileen M. Nielson	Le 27 novembre 1992	Admis
AP-90-192	Black & Decker Canada Inc.	Le 16 décembre 1992	Rejeté
AP-92-015	Canadian Thermos Products Inc.	Le 18 janvier 1993	Rejeté
AP-91-180	Shrimp Projectors Inc.	Le 26 janvier 1993	Rejeté Non compétence
AP-91-122	Les Industries Genesport Ltée	Le 24 février 1993	Rejeté
AP-92-032	R.G. Dobbins Sales Ltd.	Le 1 ^{er} mars 1993	Admis
AP-92-018	Éditions Panini du Canada Ltée	Le 19 mars 1993	Admis

Loi sur la taxe d'accise

AP-89-264	Alpha Fuels Limited	Le 6 avril 1992	Admis
AP-91-121	Essex Topcrop Sales Limited	Le 6 avril 1992	Admis
AP-91-134	Till-Fab Limited	Le 6 avril 1992	Admis en partie & renvoyé au Ministre
AP-91-149	Airway Surgical Appliances Ltd.	Le 10 avril 1992	Admis
AP-90-257	Purdel, Coopérative Agro-alimentaire	Le 14 avril 1992	Rejeté
AP-90-083	Ressources Média Inc.	Le 27 avril 1992	Rejeté
AP-90-101	The Chocolate Messenger Ltd.	Le 19 mai 1992	Admis
AP-90-012	Pierre Roberge	Le 19 mai 1992	Rejeté
AP-90-142	Les Carrières Ducharme Inc.	Le 20 mai 1992	Admis
AP-90-065	Lite Skills Program Community Living Huntsville	Le 28 mai 1992	Rejeté
AP-90-003	Beacon Christian High School	Le 1 ^{er} juin 1992	Admis & renvoyé au Ministre
AP-91-082	Suntech Optics Inc.	Le 2 juin 1992	Rejeté
AP-90-144	Aviation Leclerc Inc.	Le 8 juin 1992	Rejeté
AP-91-181	Vancouver Public Aquarium Association	Le 8 juin 1992	Rejeté
AP-91-166	Vancouver Public Aquarium Association	Le 8 juin 1992	Admis en partie

ANNEXE D — APPELS

Tableau D-1

Décisions d'appels rendues aux termes de l'article 67 (anciennement l'article 47) de la *Loi sur les douanes*, l'article 81.27 (anciennement l'article 51.27) de la *Loi sur la taxe d'accise*, l'article 61 de la LMSI et l'article 18 de la *Loi sur le droit à l'exportation de produits de bois d'oeuvre* entre le 1^{er} avril 1992 et le 31 mars 1993

Appel n°	Appelant	Date de la décision	Décision
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Loi sur les douanes

AP-89-234	Douglas Anderson et Creed Evans	Le 6 avril 1992	Admis en partie
AP-90-075	Industrial Adhesives, Division of Timminco Ltd.	Le 6 avril 1992	Rejeté
AP-91-150	IEC-Holden Inc.	Le 28 avril 1992	Rejeté
AP-91-130	C.J. Michael Flavell	Le 4 mai 1992	Admis en partie
AP-89-151	Polygram Inc.	Le 7 mai 1992	Rejeté
AP-89-165	Polygram Inc.	Le 7 mai 1992	Rejeté
AP-90-138	Pigmalion Services	Le 1 ^{er} juin 1992	Admis
AP-90-082	Lady Sandra of Canada Ltd.	Le 2 juin 1992	Admis en partie
2566	Unisys Canada Inc.	Le 3 juin 1992	Admis
AP-90-211	Philips Electronics Ltd.	Le 15 juin 1992	Admis
3100	GKN Birwelco Limited	Le 16 juin 1992	Rejeté
2228	Agri-Tech Inc.	Le 22 juin 1992	Rejeté
2229	Agri-Tech Inc.	Le 22 juin 1992	Rejeté
2751	Agri-Tech Inc.	Le 22 juin 1992	Rejeté
AP-91-110	Sandvik Rock Tools, A Division of Sandvik Canada Inc.	Le 9 juillet 1992	Admis en partie
AP-91-138	Kenroc Tools Corporation	Le 9 juillet 1992	Rejeté
AP-91-132	Durnex Medical Surgical Products Ltd.	Le 20 juillet 1992	Admis
AP-91-189	Nordic Laboratories Inc.	Le 20 juillet 1992	Rejeté
AP-90-166	Diamant Boat Truco Ltd.	Le 27 juillet 1992	Admis
AP-91-165	CallPro Canada Inc.	Le 29 juillet 1992	Admis
AP-91-227	Soren Manufacturing Co. Ltd.	Le 18 août 1992	Rejeté
AP-90-121	Fleeeguard International Corporation	Le 25 août 1992	Admis en partie
AP-91-081	Oriental Trading (Mtl) Ltd.	Le 31 août 1992	Rejeté
AP-91-223	Oriental Trading (Mtl) Ltd.	Le 31 août 1992	Rejeté
AP-91-235	Jolly Jumper Inc.	Le 14 septembre 1992	Admis

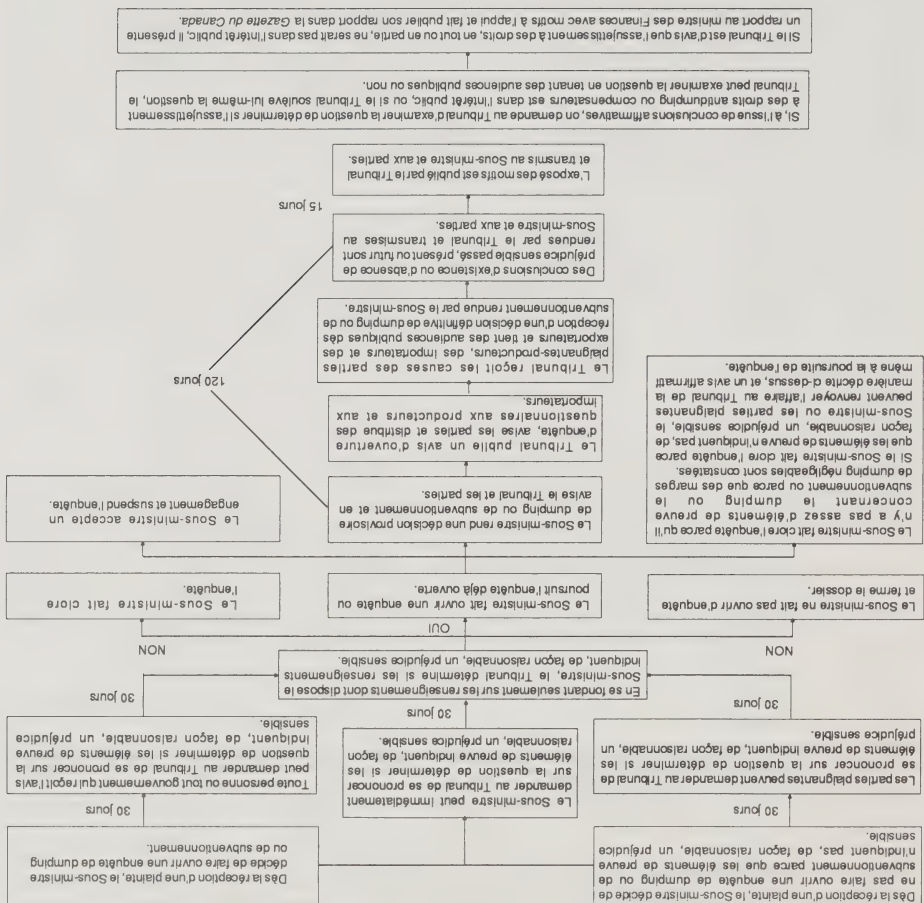


Tableau C-10 (suite)

Réexamen n° ou Enquête n°	Date de la décision	Produit	Pays	N° de la décision antérieure et date
NQ-90-003	Le 2 janvier 1991	Albums de photos à feuilles auto-adhésives et feuilles auto-adhésives	Thaïlande, Indonésie et Philippines	
FR-90-005	Le 10 juin 1991	Caissons pour puits de pétrole et de gaz	République de Corée et États-Unis d'Amérique	CIT-15-85 (le 17 avril 1986)
FR-90-006	Le 22 juillet 1991	Vlande de boeuf désossée, subdiventriomée, destinée à la transformation	CEE	CIT-2-86 (le 25 juillet 1986)
NQ-90-005	Le 26 juillet 1991	Tubes soudés en acier au carbone	Argentine, Inde, Roumanie, Taiwan, Thaïlande et Venezuela	
NQ-91-001	Le 5 septembre 1991	Tuyaux soudés en acier inoxydable	Taiwan	
NQ-91-002	Le 2 octobre 1991	Bièrè pour utilisation en Colombie-Britannique	États-Unis d'Amérique	
NQ-91-003	Le 23 janvier 1992	Tubes soudés en acier au carbone	Brésil	
NQ-91-004	Le 7 février 1992	Stores vénitiens	Suède	
FR-91-003	Le 25 février 1992	Corde torde de polypropylène et de nylon	République de Corée	ADT-8-82 (le 7 octobre 1982) R-6-86 (le 17 février 1987)
NQ-91-005	Le 13 mars 1992	Cure-dents	États-Unis d'Amérique	
NQ-91-006	Le 21 avril 1992	Tapis produit sur machine à toupilèter	États-Unis d'Amérique	
FR-91-004	Le 22 mai 1992	Origons jaunes pour utilisation en Colombie-Britannique	États-Unis d'Amérique	CIT-1-87 (le 30 avril 1987)
FR-92-001	Le 21 octobre 1992	Chaussures et couvre-chaussures imperméables	Tchécoslovaquie, Pologne, République de Corée, Taiwan, Hong Kong, Malaisie, Yougoslavie et République populaire de Chine	ADT-4-79 (le 25 mai 1979) ADT-2-82 (le 23 avril 1982) R-7-87 (le 22 octobre 1987)
NQ-92-001	Le 30 novembre 1992	Latine iceberg pour utilisation en Colombie-Britannique	États-Unis d'Amérique	
NQ-92-002	Le 11 décembre 1992	Bicyclettes et cadres de bicyclettes	Taiwan et République populaire de Chine	
NQ-92-003	Le 4 janvier 1993	Chou-llieur pour utilisation en Colombie-Britannique	États-Unis d'Amérique	
NQ-92-004	Le 20 janvier 1993	Placoplatrè	États-Unis d'Amérique	
FR-92-003	Le 25 février 1993	Albums photos à pochettes et feuilles de rechange	Japon, République de Corée, République de Chine, Hong Kong, Taiwan, Singapour, Malaisie et République fédérale d'Allemagne	CIT-1-87 (le 26 février 1988)

Tableau C-9

Décisions du Tribunal devant un groupe spécial binationnel au 31 mars 1993

Cause n°	Produit	Groupe spécial binationnel n°
NQ-91-006	Tapis produit sur machine à tisser	CDA-92-1904-02
NQ-92-004	Placoplatre	CDA-93-1904-02

Tableau C-10

Décisions visant les droits antidumping ou les droits compensateurs en vigueur au 31 mars 1993

Réexamen n° ou Enquête n°	Date de la décision	Produit	Pays	N° de la décision antérieure et date
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R-9-88	Le 24 novembre 1988	Outils de travail	Brazil	ADT-1-83 (le 28 décembre 1983)
R-13-88	Le 19 janvier 1989	Pinceaux	République populaire de Chine	ADT-6-84 (le 20 juin 1984)
CIT-2-88	Le 30 janvier 1989	Cerises à chair acidulée	Etats-Unis d'Amérique	
CIT-3-88	Le 3 février 1989	Pommes	Etats-Unis d'Amérique	
RR-89-003	Le 16 mars 1990	Jambon en conserve et pain de viande de porc en conserve	Danemark, Pays-Bas et CEE	GIC-1-84 (le 7 août 1984)
NQ-89-003	Le 3 mai 1990	Chaussures pour dames	Brazil, République populaire de Chine, Taiwan, Pologne, Roumanie et Yougoslavie	
RR-89-008	Le 5 juin 1990	Tubes soudés en acier au carbone	République de Corée	ADT-6-83 (le 28 juin 1983)
NQ-89-004	Le 6 juillet 1990	Feuilles de rechange	Brazil	
RR-89-012	Le 4 septembre 1990	Albums de photos à feuilles auto-adhésives et feuilles auto-adhésives	Hong Kong, République de Corée, République populaire de Chine, Singapour, Malaisie et Taiwan	ADT-4-74 (le 24 janvier 1975) R-3-84 (le 24 août 1984) CIT-18-84 (le 26 avril 1985) CIT-10-85 (le 14 février 1986) CIT-5-87 (le 3 novembre 1987)
RR-89-010	Le 14 septembre 1990	Pommes de terre pour utilisation en Colombie-Britannique	Etats-Unis d'Amérique	ADT-4-84 (le 4 juin 1984) CIT-16-85 (le 18 avril 1986)
RR-89-013	Le 10 octobre 1990	Moteurs à induction intégrale et à plusieurs phases	Etats-Unis d'Amérique, Brazil, Japon, Pologne, Taiwan et Royaume-Uni	ADT-8-R-78 (le 15 avril 1983) CIT-6-85 (le 11 octobre 1985)

1. Le présent tableau indique les décisions en vigueur. Pour obtenir la description précise du produit, se reporter au n° de réexamen ou d'enquête indiqué dans la première colonne du tableau.

Tableau C-7

Autres activités aux termes de la LMSI

1. Question de l'intérêt public aux termes de l'article 45 de la LMSI

Enquête n°	Produit et pays d'origine	Date de l'opinion	Opinion
PB-92-001 (NQ-92-002)	Bicyclettes assemblées ou démontées, et cadres de bicyclettes, avec des roues d'un diamètre de 16 po (40,64 cm) et plus, de Taiwan et de la République populaire de Chine	Le 27 janvier 1993	Réduction de droits antidumping non requise

2. Demande de réexamen d'une ordonnance aux termes du paragraphe 76(2) de la LMSI, dont la décision n'a pas encore été rendue au 31 mars 1993

Demande de réexamen n°	Produit et pays d'origine
RD-92-001	Certains moteurs à induction intégrale de 1 HP à 200 HP inclusivement des États-Unis d'Amérique et certains moteurs à induction à plusieurs phases de 1 CV à 200 CV inclusivement, du Brésil, du Japon, du Mexique, de la Pologne, de Taiwan et du Royaume-Uni

3. Décision sur renvoi aux termes de l'article 77.16 de la LMSI entre le 1^{er} avril 1992 et le 31 mars 1993

Enquête n°	Produit et pays d'origine	Date de la décision sur renvoi	Décision sur renvoi
NQ-91-002 Renvoi de la décision	La bière origininaire ou exportée des États-Unis d'Amérique par Pabst Brewing Company, G. Heileman Brewing Company Inc. et The Stroh Brewery Company, leurs successeurs et ayants droit, ou en leur nom, pour utilisation ou consommation dans la province de la Colombie-Britannique	Le 9 novembre 1992	Préjudice

Tableau C-8

Décisions du Tribunal devant la Cour fédérale du Canada au 31 mars 1993

Cause n°	Produit	Cour fédérale n°
NQ-90-005	Tubes soudés en acier au carbone	A—774—91
NQ-91-007	Roulements à une seule rangée de roulements coniques	A—981—92
NQ-92-002	Bicyclettes et cadres de bicyclettes	A—1667—92

Tableau C-5

Avis donnés aux termes de l'article 37 de la LMSI entre le 1^{er} avril 1992 et le 31 mars 1993

Renvoi n°	Produit et pays d'origine	Date de l'avis	Avis
RE-92-001	Certaines tôles d'acier au carbone laminées à chaud, traitées à chaud, et certaines tôles d'acier allié résistant à faible teneur de la Belgique, du Brésil, de la République fédérale tchèque et slovaque, du Danemark, de la République fédérale d'Allemagne, de la Roumanie, de la République de la Slovaquie, du Royaume-Uni, des États-Unis d'Amérique et de l'ancienne République yougoslave de Macédoine	Le 13 octobre 1992	Indications suffisantes de préjudice
RE-92-002	Certaines tôles d'acier au carbone laminées à chaud et certaines tôles d'acier allié résistant à faible teneur de la Belgique, du Brésil, de la République fédérale tchèque et slovaque, du Danemark, de la République fédérale d'Allemagne, de la Roumanie, de la République de la Slovaquie, du Royaume-Uni, des États-Unis d'Amérique et de l'ancienne République yougoslave de Macédoine	Le 13 octobre 1992	Indications suffisantes de préjudice
RE-92-003	Certains produits plats de tôle d'acier au carbone laminés à chaud de la République fédérale d'Allemagne, de la France, de l'Italie, de la Nouvelle-Zélande, du Royaume-Uni et des États-Unis d'Amérique	Le 27 octobre 1992	Indications suffisantes de préjudice
RE-92-004	Certaines tôles d'acier laminées à froid de la République fédérale d'Allemagne, de la France, de l'Italie, du Royaume-Uni et des États-Unis d'Amérique	Le 31 décembre 1992	Indications suffisantes de préjudice

Renvoi n°	Produit et pays d'origine	Dernière date légale pour publier l'avis
RE-92-005	Raccords de tuyauterie à souder de types à pression et à drainage, renvoi et évent, faits en alliages de cuivre coulé, en alliages de cuivre ouvré ou en cuivre ouvré, d'un diamètre maximal de 6 po et l'équivalent métrique, utilisés dans le chauffage, la plomberie, la climatisation et la réfrigération, des États-Unis d'Amérique et produits par Elkhart Products Corporation, Nibco Inc. et Mueller Industries Inc., leurs successeurs et ayants droit, ou en leur nom	Le 5 avril 1993
RE-92-006	Isolant préformé en fibre de verre pour tuyaux, avec pare-vapeur, des États-Unis d'Amérique	Le 5 avril 1993

Tableau C-6

Renvois aux termes de l'article 34 de la LMSI dont les décisions n'ont pas encore été rendues au 31 mars 1993

Tableau C-4

Avis d'expiration des conclusions visant les droits antidumping ou les droits compensateurs publiés entre le 1^{er} avril 1992 et le 31 mars 1993

Expiration n°	Produit et pays d'origine	Date de la décision	Résultat
LE-91-007	Chaussures et couvre-chaussures en caoutchouc	Le 1 ^{er} juin 1992	Réexamen entrepris (RR-92-001)
LE-92-001	Albums photos à pochettes fixes ou basculantes	Le 19 octobre 1992	Réexamen entrepris (RR-92-003)
LE-92-002	Coeurs pour labours profonds, coeurs pour cultivateurs, poches réversibles, lames réversibles à gros usage (dents réversibles pour gros travaux), lames vrillées réversibles (dents spirales réversibles) et socs réversibles, connus sous la désignation d'outils de travail ou de préparation du sol, montés sur des châssis et des cultivateurs agricoles, du Brésil	Décision en instance au 31 mars 1993	

Tableau C-3
Ordonnances rendues aux termes de l'article 76 de la LMSI entre le 1^{er} avril 1992 et le 31 mars 1993

Reexamen n°	Produit et pays d'origine	Date de l'ordonnance	Ordonnance
RR-91-004	Origins jaunes, frais et entiers, des États-Unis d'Amérique et destinés à être utilisés ou consommés dans la province de la Colombie-Britannique	Le 22 mai 1992	Conclusions provoquées
RR-91-005	Cîes brutes de remplacement en laiton de l'Italie et produits par ou au nom de Silca S.p.A. de l'Italie, de ses successeurs et de ses cessionnaires	Le 1 ^{er} juin 1992	Conclusions annulées
RR-91-006	Certaines plaques en aluminium présensibilisées chimiquement pour impression offset produites par ou au nom de Howson-Algraphy du Royaume-Uni	Le 22 mai 1992	Conclusions annulées
RR-92-001	Chaussures et couvre-chaussures en caoutchouc imperméables fabriqués en tout ou en partie en caoutchouc, avec ou sans chaussons de feutre, doublures, fermetures ou dispositifs de sécurité, de la République de Corée et de Taiwan, à l'exception des bottes pour motoneige, des bottes à semelles en cuir et des chaussures de sécurité qui sont spécialement conçues pour protéger des blessures celui qui les porte et qui comportent des caractéristiques spéciales comme des bouts de sécurité, des bouts en acier, des semelles de sécurité en acier, des semelles antidérapantes ou du caoutchouc spécialement composé résistant aux acides et aux autres produits chimiques, et chaussures et couvre-chaussures en caoutchouc imperméables fabriqués en tout ou en partie en caoutchouc, avec ou sans chaussons de feutre, doublures, fermetures ou dispositifs de sécurité, à l'exception des bottes pour motoneige, des bottes à semelles en caoutchouc et à tiges en cuir et des chaussures de sécurité, de la Malaisie, de la Yougoslavie et de la République populaire de Chine	Le 21 octobre 1992	Conclusions provoquées
RR-92-002	Certains raccords pour soudure en bout en acier inoxydable austénitique, faits conformément aux prescriptions de la norme ASTM A-403, selon les dimensions nominales des tuyaux (diamètres extérieurs) se situant entre 1/2 po et 5 po, de calibres 5, 10, 40, 80, 160, soudés ou sans soudure, du Japon	Le 13 novembre 1992	Conclusions annulées
RR-92-003	Albums photos à pochettes fixes ou basculantes (importés ensemble ou séparément) et leurs feuilles de rechange, du Japon, de la République de Corée, de la République populaire de Chine, de Hong Kong, de Taiwan, de Singapour, de la Malaisie et de la République fédérale d'Allemagne	Le 25 février 1993	Conclusions provoquées

Tableau C-2

Enquêtes sur le dumping ou le subventionnement, ou les deux, ouvertes aux termes de l'article 42 de la LMSI, mais dont les conclusions n'ont pas encore été rendues au 31 mars 1993

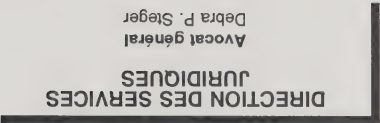
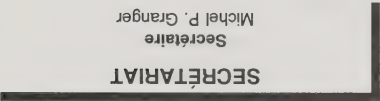
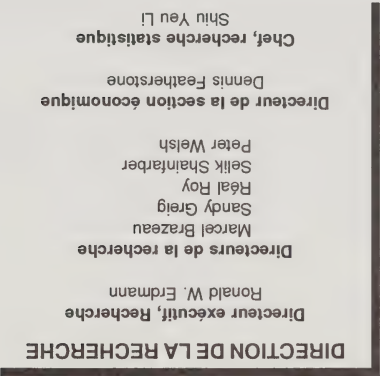
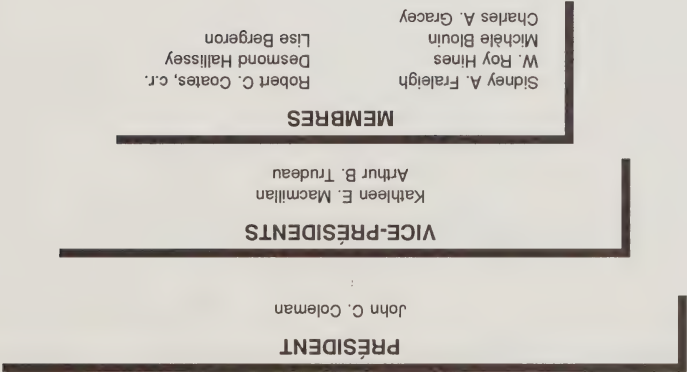
Enquête n°	Produit et pays d'origine	Date de l'avis	Dernière date légale pour rendre les conclusions
NQ-92-007	Certaines tôles d'acier au carbone laminées à chaud	Le 11 janvier 1993	Le 6 mai 1993
	<p>Royaume-Uni, des États-Unis d'Amérique et de l'ancienne République yougoslave de Macédoine</p> <p>fédérale d'Allemagne, de la Roumanie, du Royaume-Uni, des États-Unis d'Amérique, produits coupés en longueurs, d'une largeur allant de 24 po (610 mm) à 152 po (3 860 mm) inclusivement, et d'une épaisseur allant de 0,187 po (4,75 mm) à 4,000 po (101,60 mm) inclusivement, de la Belgique, du Brésil, de la République tchèque, du Danemark, de la République fédérale d'Allemagne, de la France, de l'Italie, de la Nouvelle-Zélande, du Royaume-Uni et des États-Unis d'Amérique, produits selon les exigences de l'ASTM ou d'autres systèmes de désignation ou normes reconnus, ou produits selon toute exigence de marque déposée, en bobines ou coupés en longueurs, d'une largeur allant de 3/4 po à 96 po (19 mm à 2 439 mm) inclusivement et d'une épaisseur allant de 0,060 po à 0,625 po (1,60 mm à 15,87 mm)</p>		
NQ-92-008	Certains feuillets, plats, en acier au carbone et laminés pour planchers, tôles	Le 2 février 1993	Le 31 mai 1993
NQ-92-009	Produits plats de tôle d'acier au carbone laminés à froid (incluant en acier allié résistant à faible teneur en bobines ou en feuilles (non peints, plaqués, revêtus ou enduits), d'une largeur maximale de 80 po (2 032 mm), d'une épaisseur variant de 0,014 po à 0,142 po (0,35 mm à 3,61 mm) inclusivement, de la République fédérale d'Allemagne, de la France, de l'Italie, du Royaume-Uni et des États-Unis d'Amérique	Le 7 avril 1993	Le 29 juillet 1993

ANNEXE C — ACTIVITÉS AUX TERMES DE LA LMSI

Tableau C-1

Conclusions rendues aux termes de l'article 43 de la LMSI entre le 1^{er} avril 1992 et le 31 mars 1993

Enquête n°	Produit et pays d'origine	Date des conclusions	Conclusions
NQ-91-006	Tapis produit sur machine à tisser, fait de poils ou de polyester ou de polypropylène, à l'exclusion des tapis pour véhicules automobiles et des couvre-planchers d'une superficie inférieure à 5 m ² , des États-Unis d'Amérique	Le 21 avril 1992	Préjudice
NQ-91-007	Roulements à une seule rangée de rouleaux coniques, d'un diamètre extérieur variant de 1,000 à 6,625 po inclusivement (25,400 à 168,275 mm) du Japon	Le 9 juillet 1992	Aucun préjudice
NQ-92-001	Laitue (pomme) iceberg fraîche, des États-Unis d'Amérique, pour utilisation ou consommation dans la province de la Colombie-Britannique	Le 30 novembre 1992	Préjudice
NQ-92-002	Bicyclettes assemblées ou démontées, et cadres de bicyclettes, avec des roues d'un diamètre de 16 po (40,64 cm) et plus, de Taiwan et de la République populaire de Chine	Le 11 décembre 1992	Préjudice
NQ-92-003	Chou-fleur frais, des États-Unis d'Amérique, pour utilisation ou consommation dans la province de la Colombie-Britannique	Le 4 janvier 1993	Aucun préjudice
NQ-92-004	Piécoplaître, principalement composé d'une âme en gypse sur laquelle est collé du papier, des États-Unis d'Amérique	Le 20 janvier 1993	Préjudice
NQ-92-005	Chaussures à dessus imperméable en plastique et caoutchouc ou en plastique, et chaussures imperméables en plastique, sauf les chaussures de sécurité et de sport, de la République fédérative de Chine, de la République de Corée et de Taiwan	Le 4 février 1993	Aucun préjudice
NQ-92-006	Pâte de tomate en contenants de plus de 100 onces liquides des États-Unis d'Amérique	Le 30 mars 1993	Aucun préjudice



Article		Attributions
<i>Loi sur le droit à l'exportation de produits de bois-d'oeuvre</i>		
18	Appels	
<i>Loi sur l'administration de l'énergie</i>		
13.63	Appels	

Dispositions législatives pertinentes du Tribunal

Article	Attributions

Loi sur le TCFE

18	Enquêtes factuelles et consultatives sur les questions économiques, commerciales ou tarifaires ayant une portée générale ou sectorielle au Canada
19	Enquêtes sur les questions relatives aux tarifs douaniers
19.1 et 23.1	Enquêtes sur les mesures de sauvegarde concernant les marchandises importées des États-Unis
20	Enquêtes sur les mesures de sauvegarde concernant l'importation de marchandises ou la prestation de services au Canada par des personnes n'y résidant pas habituellement
23	Plaintes des producteurs nationaux visant des mesures de sauvegarde

La LMSI (droits antidumping et droits compensateurs)

33, 34, 35 et 37	Avis sur le préjudice donné au sous-ministre du Revenu national pour les douanes et l'accise
42	Enquêtes concernant le préjudice sensible causé par le dumping ou le subventionnement de marchandises
44	Reprise de l'enquête (renvoi de la Cour fédérale du Canada ou d'un groupe spécial binational)
45	Avis sur la question de l'intérêt public
61	Appels d'un réexamen conformément à l'article 59
76	Réexamens des conclusions de préjudice sensible
89	Décisions sur l'identité de l'importateur

Loi sur les douanes

67	Appels de certaines décisions du sous-ministre du Revenu national pour les douanes et l'accise
68	Nouvelles audiences (à la suite d'un renvoi de la Cour fédérale du Canada)
70	Consultations

Loi sur la taxe d'accise

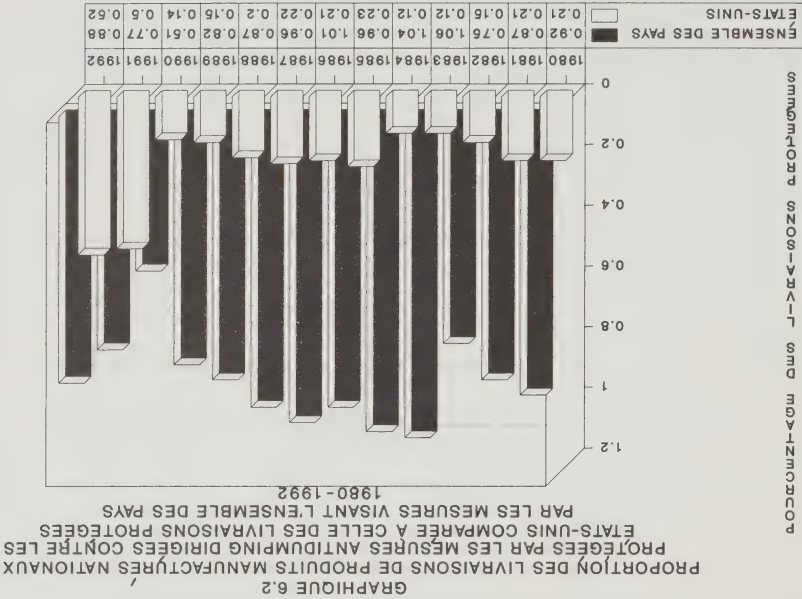
81.19, 81.21, 81.22, 81.23 et 81.33	Appels de certaines décisions du ministre du Revenu national
81.32	Prolongations du délai pour opposition ou appel

ANNEXES

Mesures antidumping visant des produits importés des Etats-Unis

Le graphique 6.2 révèle que pendant la période allant de 1980 à 1992, près d'un peu plus de 0,2 p. 100, en moyenne, des livraisons de produits manufacturés nationaux ont bénéficié des mesures antidumping visant les Etats-Unis, comparativement à 0,9 p. 100 pour les livraisons bénéficiant des mesures antidumping visant l'ensemble des pays, y compris les Etats-Unis. La proportion des

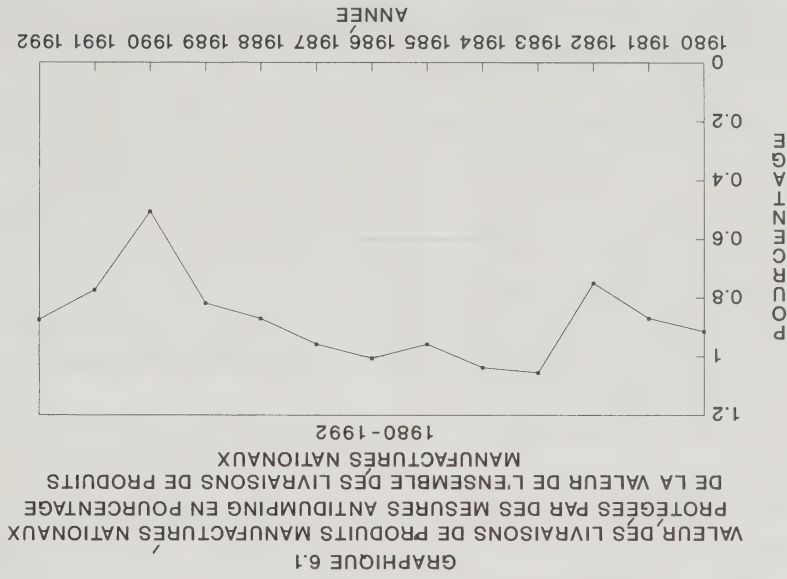
livraisons nationales protégées par les mesures antidumping visant les Etats-Unis a augmenté sensiblement en 1991, en raison de mesures prises contre les livraisons de la bière et de tapis. En 1992, la proportion des livraisons nationales protégées par les mesures visant les Etats-Unis a augmenté plus faiblement que celle des livraisons protégées par les mesures visant l'ensemble des pays, y compris les Etats-Unis. La chose était due au fait que les livraisons bénéficiant des mesures antidumping visant les Etats-Unis étaient moindres que les livraisons bénéficiant des mesures antidumping visant les autres pays.



Proportions d'industries manufacturières protégées par des mesures antidumping

provenance des Etats-Unis (la bière et le tapis produit sur machine à tisser). En 1992, la proportion de livraisons protégées par des mesures antidumping a continué d'augmenter en raison d'une cause importante concernant des bicyclettes et des cadres de bicyclettes en provenance de Taïwan et de la République populaire de Chine. En 1992, des livraisons de produits manufacturés nationaux d'une valeur d'environ 1,4 milliard (dollars courants) étaient protégées par des mesures antidumping. Les secteurs de la chaussure et du cuir, ainsi que celui du textile et du vêtement, rendaient compte de la plus grande proportion des livraisons de produits manufacturés nationaux protégés par des mesures antidumping (54 p. 100) pour la troisième année consécutive. Avant 1990, c'était le secteur de métaux de première fusion qui bénéficiait le plus des mesures antidumping (période allant de 1980 à 1990).

Le graphique 6.1 indique la valeur des livraisons de produits manufacturés nationaux protégées par des mesures antidumping en tant que pourcentage de la valeur de l'ensemble des livraisons de produits manufacturés nationaux au cours de la période 1980-1992. En moyenne, au cours de cette période, environ 0,9 p. 100 des livraisons ont été protégées par des mesures antidumping. Cette proportion a atteint un sommet d'environ 1,1 p. 100 en 1983, après la récession de 1981-1982, et un seuil de 0,5 p. 100 en 1990. La proportion de livraisons de produits manufacturés nationaux protégées par des mesures antidumping a augmenté en 1991. Certaines enquêtes ont porté sur de grandes industries touchées par les importations en



CHAPITRE VI

UTILISATION PAR LE CANADA DU CODE ANTIDUMPING DU GATT

Mise à jour

En 1990, la Direction de la recherche a fait une étude sur l'utilisation par le Canada du Code antidumping du GATT. Il est ressorti de cette étude que l'utilisation par le Canada du Code antidumping du GATT, mesurée par un certain nombre d'indicateurs, a baissé depuis le milieu des années 80.

Dans le dernier rapport annuel, certains des indicateurs qui avaient servi dans l'étude de 1990 ont été mis à jour par l'inclusion de données relatives à l'année civile 1991. Cette mise à jour a permis d'établir que le nombre de mesures antidumping ajoutées en 1991 dépassait le nombre cumulé des mesures ajoutées en 1990 et 1989. Elle a également permis de constater que la proportion des livraisons de produits manufacturés nationaux protégés par les mesures antidumping visant les États-Unis a sensiblement augmenté en 1991.

Le présent chapitre contient une nouvelle mise à jour de certains des indicateurs clés présents dans l'étude de 1990.

Fréquence des conclusions antidumping au Canada

Dans cette section, nous examinons dans quelle mesure le Tribunal et ses prédécesseurs ont contribué à l'augmentation ou à la réduction du nombre de mesures antidumping en vigueur. Du tableau 6.1, qui donne l'inventaire des mesures antidumping en vigueur de 1980 à 1992, il ressort ce qui suit :

- la plus forte augmentation du nombre de mesures antidumping en vigueur est survenue en 1983, après la récession de 1981-1982;

- les mesures antidumping abrogées entre 1989 et 1992 représentent environ 70 p. 100 des mesures en vigueur au début de la période à l'étude.

MESURES ANTIDUMPING EN VIGUEUR				
TABLEAU 6.1				
1980-1992				
Nombre de mesures antidumping				
en vigueur				
Abrogées*				
Année	Ajoutées	En vigueur (au 31 déc.)		
1979	13	6	88	
1980	12	6	95	
1981	27	13	101	
1982	30	4	115	
1983	18	12	141	
1984	100	47	147	
1985	30	21	156	
1986	8	12	152	
1987	17	14	155	
1988	3	22	136	
Total partiel				
1989	1	15	122	
1990	10	58	74	
1991	12	17	69	
1992	4	6	67	
Total partiel				
1992	27	96		
1993	27			
TOTAL				
273		206		

* Comprend les mesures annulées et venues à expiration.
1. Comprend 88 conclusions en vigueur au début de 1980.
Source : Base de données de la Direction de la recherche du Tribunal.

La plus importante diminution du nombre de mesures antidumping s'est produite en 1990, lorsque le Tribunal a terminé le réexamen de nombreuses mesures qui avaient été maximale de cinq ans lors de l'adoption de la LMSI, le 1^{er} décembre 1984. Le nombre de mesures en vigueur a continué de baisser après 1990 et, en 1992, était à son niveau le plus bas pour la période à l'étude.

Le nombre de mesures antidumping ajoutées en 1992 était nettement inférieur à celui des deux années précédentes. Trois des quatre mesures antidumping ajoutées visaient des importations depuis un pays, soit les États-Unis. Or, un certain nombre de mesures antidumping ajoutées en 1991 et en 1990 visaient des importations depuis plusieurs pays.

Enquêtes sur les mesures de sauvegarde aux termes de l'ALÉ

Conformément à l'article 19.1 de la Loi sur le TCE, le Tribunal peut, sur saisine, enquêter et faire rapport sur la question consistant à déterminer si les marchandises visées par les réductions tarifaires aux termes de l'ALÉ sont importées en si grandes quantités et à des conditions telles que leur importation constitue la principale cause d'un préjudice grave subi par les producteurs nationaux de marchandises similaires ou directement concurrentes.

Aux termes de l'article 23 de la Loi sur le TCE, les producteurs canadiens peuvent également déposer directement auprès du Tribunal une plainte de préjudice grave à l'égard de l'augmentation des importations par suite des réductions tarifaires prévues par l'ALÉ. Ces plaintes sont traitées de la même manière que les demandes de prises de mesures de sauvegarde globales indiquées à l'organigramme E-1 de l'annexe E. Si le Tribunal rend des conclusions de préjudice grave dans une enquête demandée par le gouvernement ou par un producteur, le tarifaire pendant une période de trois ans.

permet l'entrée en franchise au Canada de la plupart des exportations en provenance des pays antillais du Commonwealth. Les producteurs canadiens qui pensent subir un préjudice réel ou éventuel en raison des produits importés dans le cadre de l'un de ces programmes peuvent demander au gouvernement de supprimer, en partie ou en entier, les préférences du TPG ou du CARIBCAN consenties à l'un de ces pays ou à plusieurs d'entre eux.

Les producteurs qui demandent cette forme de protection doivent prouver qu'ils subissent un préjudice réel ou éventuel causé par l'importation réelle ou éventuelle de marchandises similaires ou directement concurrentes qui bénéficient d'une préférence tarifaire. Les demandeurs n'ont pas besoin de représenter la totalité ou une partie précise de la production de cette marchandise au Canada, mais le Tribunal examinera la situation pour l'ensemble de l'industrie au moment où il étudiera la demande.

L'annexe E (organigramme E-2) contient des renseignements sur les dispositions législatives relatives à la procédure applicable à une plainte visant des mesures de sauvegarde contre le TPG ou le CARIBCAN déposée par les producteurs.

légèrement augmenté en 1990 en raison de la demande engendrée par la grève chez Algoma. Les importations ont diminué de nouveau peu après le début de 1991 et baissé considérablement en 1992.

- Pour ce qui est du volume relatif des importations, le Tribunal a constaté que le marché affichait une diminution brusque et soutenue depuis l'année record de 1988 et qu'il avait fléchi de 40 p. 100 à la fin de 1991, tendance qui s'était poursuivie au début de 1992. Les importations ont diminué plus rapidement que l'ensemble du marché de sorte que, en 1991, leur part du marché était moins importante que celle de 1988. Le Tribunal a aussi constaté que les importations ont reculé par rapport à la production nationale entre les mois de janvier 1991 et avril 1992.

- Le Tribunal a déclaré qu'il n'ouvrirait pas d'enquête aux termes du paragraphe 27(1) de la Loi sur le TCCE parce que les renseignements dont il disposait n'indiquaient pas, de façon raisonnable, que l'importation des profilés à larges ailes se faisait en quantités tellement accrues et à des conditions telles qu'elle causait ou menaçait de causer un préjudice grave à Algoma.

Enquêtes sur les mesures de sauvegarde contre le TPG ou le CARIBCAN

Aux termes de l'article 19 de la Loi sur le TCCE, le ministre des Finances a accordé au Tribunal un mandat permanent pour examiner les demandes de protection des producteurs canadiens contre les programmes du TPG ou du CARIBCAN et faire rapport à ce sujet. Dans le cadre du programme du TPG, le gouvernement canadien applique des taux de droits réduits sur les produits importés de plus de 150 pays en voie de développement. L'accord CARIBCAN

91 p. 100 de l'ensemble des importations, comparativement à 9 p. 100 en 1988. Les importations originaires des États-Unis ont fléchi en 1991 et, pendant les quatre premiers mois de 1992, ont chuté de 55 p. 100 par rapport à la même période en 1991. De plus, leur part de l'ensemble des importations est tombée à 77 p. 100 en raison des gains réalisés par le Luxembourg et le Royaume-Uni.

- Le Tribunal a estimé que les renseignements indiquaient, de façon raisonnable, que les profilés à larges ailes avaient été importés dans des conditions telles qu'elles causaient ou menaçaient de causer un préjudice grave à Algoma. Les faibles prix fixés par des mini-aciéries américaines au cours des cinq dernières années ont sans aucun doute fait que les producteurs intégrés d'Amérique du Nord comme Algoma ont été nettement désavantagés sur le plan des coûts. Algoma a dû pratiquer des prix analogues, mais ses résultats financiers en ont souffert.

- Cette érosion des prix a fait qu'Algoma a été d'autant plus vulnérable aux autres pressions qui se sont exercées sur elle au cours des cinq dernières années. Au nombre de ces pressions figuraient l'appréciation du dollar canadien, les réductions tarifaires aux termes de l'ALÉ, une baisse importante de la demande sur le marché des profilés à larges ailes, la grève chez Algoma en 1990 et les incertitudes attribuables aux changements de propriété.

- Pour ce qui est de déterminer si les renseignements dont il a pris connaissance indiquaient, de façon raisonnable, que l'importation des profilés à larges ailes s'était faite en quantités tellement accrues qu'elle causait ou menaçait de causer un préjudice grave à Algoma, le Tribunal a conclu que cette condition n'avait pas été remplie. Le Tribunal a constaté que les importations avaient baissé, en termes absolus, depuis 1988 et qu'elles avaient

au préjudice grave ou à la mesure d'un préjudice grave.

Au cours de la dernière année, Algoma Steel Inc. a déposé une plainte de préjudice grave contre des importations. Voici un résumé de cette cause.

Certains profils en acier à larges ailes — CP-92-001

Décision : Ne pas ouvrir une enquête sur des mesures de sauvegarde
(le 24 août 1992)

Membres du Tribunal : Hallissey
(membre président), Coleman, Coates

• Algoma Steel Inc. (Algoma), le seul producteur canadien de marchandises en question, a soutenu que l'importation de marchandises similaires ou directement concurrentes se faisait en quantités tellement accrues et à des conditions telles qu'elle lui causait et menaçait de lui causer un préjudice grave.

• Algoma a soutenu que les importations en provenance des États-Unis avaient augmenté rapidement depuis 1987 et qu'en 1991, elles avaient accaparé une part importante du marché au détriment d'Algoma. Bien qu'Algoma ait tenté de conserver sa part du marché face aux importations des États-Unis dans un marché à la baisse, les bas prix fixés par des mini-acières américaines l'ont forcée et ont obligé les importateurs d'autres pays à s'aligner sur ces prix pour vendre les profils à larges ailes au Canada. Cela a entraîné une grave détérioration des résultats financiers d'Algoma et une baisse importante de l'emploi.

• Le Tribunal a constaté que, depuis 1988, les États-Unis étaient devenus le plus important fournisseur étranger de profils à larges ailes. En 1991, les importations originaires de ce pays représentaient

que ces importations causent ou menacent de causer un préjudice grave aux producteurs nationaux. Ces mesures de sauvegarde peuvent prendre la forme de restrictions quantitatives ou de majorations.

Les enquêtes sur les mesures de sauvegarde peuvent être ouvertes à la demande du gouvernement aux termes de l'article 20 de la Loi sur le TCCB, ou à la suite de plaintes de préjudice grave déposées auprès du Tribunal par les producteurs nationaux aux termes des articles 22 à 30 de la Loi sur le TCCB. Certaines conditions doivent être remplies pour que le Tribunal ouvre une enquête. L'organigramme E-1 de l'annexe E contient des renseignements sur les dispositions s'appliquant au dépôt d'une plainte visant des mesures de sauvegarde par les producteurs. Dans le cas des enquêtes ouvertes à la demande du gouvernement et à la suite de plaintes déposées par les producteurs, le Tribunal doit constater que l'augmentation des importations cause un préjudice à la production de marchandises similaires ou directement concurrentes au Canada. Si le Tribunal conclut que l'industrie nationale subit un préjudice grave ou qu'elle est menacée de subir un préjudice grave, le gouvernement décide des mesures à prendre. Si le Tribunal rend des conclusions de préjudice grave, le gouvernement peut lui demander de se pencher sur le meilleur recours à imposer.

Les articles 20.1 et 26 de la Loi sur le TCCB prévoient que, dans les enquêtes sur les mesures de sauvegarde contre les importations où le Tribunal conclut que les marchandises originaires des États-Unis ou d'ailleurs sont importées en quantités et à des conditions telles qu'elles constituent une des causes principales d'un préjudice grave, le Tribunal doit déterminer si la quantité de ces marchandises en provenance des États-Unis est importante par rapport aux marchandises du même genre en provenance d'autres sources et si ces marchandises des États-Unis contribuent de façon importante

L'article XIX du GATT prévoit qu'un signataire peut imposer, pour des périodes temporaires, des restrictions à l'importation d'un produit en particulier dans des situations d'urgence lorsqu'il est démontré

Enquêtes sur les mesures de sauvegarde globales

Aux termes des articles 19 et 20 de la Loi sur le TCE, le gouvernement peut demander au Tribunal d'enquêter et de faire rapport sur toute question relative aux tarifs douaniers ou sur toute question ayant trait à l'importation de marchandises ou à la prestation de services qui cause ou menace de causer un préjudice à la production de marchandises ou à la prestation de services au Canada. Les producteurs nationaux peuvent demander au Tribunal, aux termes des articles 22 à 30 de la Loi sur le TCE, de faire des enquêtes sur les mesures de sauvegarde relativement au préjudice grave causé par des importations. Ils peuvent aussi lui demander, sur saisine du ministre des Finances, aux termes de l'article 19 de la Loi sur le TCE, de tenir des enquêtes sur le préjudice causé par des importations entrées à des taux tarifaires préférentiels depuis des pays en voie de développement.

Enquêtes sur le préjudice causé par les importations

Le ministre des Finances a également saisi le Tribunal, aux termes de l'article 19 de la Loi sur le TCE, d'une enquête sur la question de l'intérêt public relativement à l'imposition de droits antidumping sur la bière américaine importée en Colombie-Britannique. Le Tribunal prévoit se pencher sur cette enquête au cours de l'exercice 1993-1994, sauf changement de circonstances imprévu.

des Finances, sont de bons exemples du type de travail que le Tribunal peut être appelé à faire conformément à l'article 19 de la Loi sur le TCE.

sur l'enquête, ainsi que de préciser les questions relatives à la compétitivité qui se posent à elles, en tant qu'industrie et autrement.

- Le Tribunal a tenu des audiences publiques régionales à Calgary (Alberta) les 24 et 25 mars 1993, ainsi qu'à Ottawa (Ontario) les 21 et 22 avril 1993. Onze parties intéressées y ont assisté, parmi lesquelles des représentants de sociétés, d'associations industrielles, de gouvernements et d'autres associations. Ces audiences ont permis aux parties de présenter les faits et les arguments pertinents à l'enquête.

- L'audience publique définitive du Tribunal débuta à Ottawa le 20 septembre 1993. Les parties intéressées auront la possibilité de commenter le travail de recherche (qui sera publié en août) accompli par le personnel du Tribunal et ses experts-conseils. C'est aussi au cours de cette audience que sera présentée l'argumentation finale. Le Tribunal prévoit soumettre son rapport au gouvernement d'ici le 31 décembre 1993.

Enquêtes relatives aux tarifs douaniers

Aux termes de l'article 19 de la Loi sur le TCE, le Tribunal, sur saisine du ministre des Finances, enquête et lui fait rapport sur «toute question relative aux tarifs douaniers, y compris celles concernant les droits ou les obligations du Canada sur le plan international». Ces enquêtes peuvent comporter l'examen d'une variété de questions comme le classement des marchandises ou la réduction ou l'élimination des tarifs et leurs répercussions sur les industries nationales. L'enquête portant sur la réduction des tarifs sur les textiles, menée pendant l'exercice 1989-1990 et celle portant sur les anomalies tarifaires, menée en 1990, à la demande du ministre

- Le gouvernement est en train d'examiner le rapport et a invité toutes les parties intéressées à lui faire connaître leur avis.

Enquête sur la compétitivité des industries canadiennes de l'élevage des bovins et de la transformation du bœuf — GC-92-001

Membres du Tribunal : Trudeau (membre président), Fraleigh, Coates

Mandat

- Le gouverneur en conseil (décret C.P. 1992-2378 du 19 novembre 1992), à la demande de représentants de l'industrie canadienne de l'élevage des bovins et de la transformation du bœuf, a ordonné au Tribunal de faire enquête, aux termes de l'article 18 de la Loi sur le TCCE, sur la compétitivité des industries canadiennes de l'élevage des bovins et de la transformation du bœuf sur le marché nord-américain et les marchés internationaux.

- Le Tribunal a été saisi de l'enquête par le gouverneur en conseil, sur la recommandation du ministre des Finances, du ministre de l'Agriculture et du ministre de l'Industrie, des Sciences et de la Technologie et ministre du Commerce extérieur.

- Aux termes de son mandat, le Tribunal devait :

- tracer un portrait représentatif des industries de l'élevage des bovins et de la transformation du bœuf au Canada, aux États-Unis et au Mexique dans un contexte mondial, compte tenu des tendances de la production, de la consommation et du commerce international;
- examiner les conditions et les tendances de la structure de ces industries au Canada, aux États-Unis et au Mexique à

- dégrader et examiner les facteurs influant sur la compétitivité des industries de l'élevage des bovins et de la transformation du bœuf au Canada, aux États-Unis et au Mexique ainsi que sur d'autres marchés, en particulier les politiques gouvernementales, les mesures réglementaires et les programmes de subvention et autres programmes d'aide, y compris ceux qui ont trait au transport, à la disponibilité et aux coûts des intrants comme les terrains et les céréales, les normes en matière d'environnement et de qualité de la production et l'accès aux marchés;

- évaluer, à la lumière de ce qui précède, les défis et les perspectives qui se présenteront aux industries canadiennes de l'élevage des bovins et de la transformation du bœuf dans les années à venir.

Processus d'enquête

- Le Tribunal s'est vu demander de tenir des audiences publiques relativement à l'enquête. Une audience-réunion consultative publique a été tenue préliminairement à Ottawa le 14 janvier 1993. Les délibérations ont commencé avec une réunion consultative d'une demi-journée à laquelle 14 participants étaient présents. Il s'agissait de représentants des secteurs de l'enseignement, de la recherche, de l'industrie et des organisations nationales, qui ont discuté de questions comme l'étendue du produit, les sujets clés, la disponibilité des renseignements et le déroulement de l'enquête. Après la conclusion de la réunion consultative, les parties intéressées ont eu l'occasion de commenter celle-ci et de donner leur avis

d'organismes de gestion de l'offre et d'autres associations. Cette audience visait à mettre en lumière les répercussions potentielles des méthodes d'importation et des méthodes de remplacement. L'audience a également permis aux parties intéressées de poser des questions au personnel de la recherche du Tribunal sur son *Rapport analytique*, ainsi qu'aux experts-conseils sur leurs rapports. Les parties ont également pu exprimer leurs derniers arguments au cours de cette audience.

Rapport définitif

• Le Tribunal a formulé ses recommandations sur les meilleures méthodes de répartition des contingents d'importation relativement à chaque produit qui avait fait l'objet de l'enquête. Dans le cas de beaucoup de ces produits, le Tribunal a recommandé des solutions de rechange aux systèmes actuels de répartition des contingents d'importation. De façon plus précise, ces recommandations étaient les suivantes :

- Pour la plupart des produits qu'il a examinés pendant les 14 mois de son enquête, à savoir le fromage, la crème glacée, le yogourt, le babeurre, le lait évaporé/concentré et les œufs en coquille (qui sont généralement consommés, pour la plupart, sous la même forme que celle sous laquelle ils sont importés), le Tribunal a recommandé des enchères libres comme méthode à privilégier pour la répartition des contingents d'importation. Les enchères seraient structurées de manière à assurer une certaine continuité du marché et mettraient les titulaires existants et les nouveaux arrivés sur un même pied de concurrence pour les contingents d'importation.

- Pour le poulet et le dindon, le Tribunal a recommandé d'attribuer d'abord les contingents d'importation aux surtransformateurs de produits avicoles transformés, comme les repas préparés au poulet, ne figurant pas sur la Liste de marchandises d'importation contrôlée. Non seulement ce secteur doit-il faire concurrence aux produits américains fabriqués à base d'intrants de volaille à plus faible coût, mais encore sa protection tarifaire diminue aux termes de l'ALE. Le Tribunal a recommandé que le reste des contingents d'importation pour le poulet et le dindon soient attribués aux transformateurs de volaille au Canada, en fonction de leur part du marché.

- Pour les œufs d'incubation et les poussins de poulet à griller, le Tribunal a recommandé le maintien de l'actuel système de répartition fondé sur la part du marché, alors que la répartition des contingents d'importation des ovoproduits doit continuer de se faire en fonction principalement des niveaux antérieurs des importations.

- Pendant l'étude des diverses méthodes possibles de répartition, le Tribunal a pris en compte les facteurs d'équité, de prévisibilité, d'efficacité économique, de transparence, d'entrée dans l'industrie, de réceptivité aux besoins du marché et de compétitivité. Le Tribunal a conclu qu'aucune de ses recommandations ne porterait atteinte au système canadien de gestion de l'offre ou serait incompatible avec les droits et les obligations du Canada à l'échelle internationale.

• Le rapport définitif a été présenté au gouvernement le 13 octobre 1992, tel qu'il avait été demandé. Le rapport a été déposé devant le Parlement le 30 novembre 1992.

besoins du marché et de compétitivité. Il formulera des recommandations sur les principes qui régiront, de façon générale, la répartition des contingents d'importation.

- Lors de son enquête, le Tribunal devait notamment :

- examiner les méthodes selon lesquelles les contingents d'importation ont été répartis, par exemple, en fonction des importations traditionnelles, de la part du marché, des parts affectées aux surtransformateurs de produits ne figurant pas sur la liste des marchandises d'importation contrôlée, ainsi que d'autres méthodes de répartition des contingents d'importation, par vente aux enchères par exemple;

- examiner les répercussions que les diverses méthodes de répartition des contingents ont eu ou peuvent avoir sur le marché et sur le comportement concurrentiel de ses participants;

- déterminer si la méthode selon laquelle les contingents d'importation sont répartis devrait varier pour les différents produits agricoles assujettis à des contrôles d'importations;

- déterminer si la méthode selon laquelle les contingents d'importation sont répartis devrait s'appliquer à la délivrance de licences d'importations supplémentaires;

- prendre en considération le fait que le Canada a des obligations et des droits internationaux aux termes d'accords commerciaux bilatéraux et multilatéraux.

Processus d'enquête

- Cette enquête a été l'une des plus importantes que le Tribunal ait jamais entreprises. Le Tribunal a recueilli les opinions de participants de tous les niveaux

du circuit de distribution des produits laitiers et de la volaille. Il a entendu les témoignages des détenteurs actuels de contingents ainsi que de ceux qui souhaitent en obtenir.

- Afin d'obtenir des renseignements non disponibles dans des sources publiées, le Tribunal a envoyé des questionnaires à environ 330 entreprises de différents niveaux du circuit de distribution des 2 industries. Des membres et le personnel du Tribunal ont visité plus de 20 installations avicoles et laitières au Québec et en Ontario. L'enquête a donné lieu à la rédaction de 17 rapports du personnel et d'experts-conseils sur différents aspects des industries touchées.

- Aux termes de son mandat, le Tribunal devait également tenir des audiences publiques et permettre la présentation d'exposés oraux et écrits. Le Tribunal a reçu 151 exposés et a tenu 23 jours d'audiences publiques. En tout, 108 groupes et particuliers se sont inscrits comme participants à cette enquête.

- Une audience publique préliminaire a eu lieu à Ottawa (Ontario) en octobre 1991. Elle avait pour but de faire en sorte que toutes les parties intéressées puissent exprimer leur point de vue sur le processus d'enquête prévu par le Tribunal et sur le programme de recherche de celui-ci.

- Le Tribunal a tenu sa première grande audience publique à Ottawa du 22 janvier au 6 février 1992. Cette audience avait pour but de permettre de dégager les principales questions touchant la répartition des contingents d'importation.

- Le Tribunal a tenu sa dernière audience publique à Ottawa du 8 juin au 18 juin 1992. Trente parties intéressées y ont participé, parmi lesquelles des représentants de sociétés, d'associations industrielles, de gouvernements,

CHAPITRE V

ENQUÊTES SUR LES QUESTIONS ÉCONOMIQUES, COMMERCIALES ET TARIFAIRES, ET LES MESURES DE SAUVEGARDE

La Loi sur le TCEE contient des dispositions

générales aux termes desquelles le gouvernement ou le ministre des Finances peuvent demander au Tribunal de faire enquête sur les questions économiques, commerciales ou tarifaires. En outre, le

gouvernement peut demander au Tribunal de faire enquête sur le préjudice causé à la prestation de services par des importations. Les producteurs canadiens peuvent

également demander au Tribunal d'ouvrir une enquête sur des mesures de sauvegarde à prendre contre des importations. Dans le

cas de ces enquêtes, le Tribunal agit à titre consultatif, avec le mandat de faire des recherches, de recevoir les présentations et les observations, de trouver les faits, de tenir

des audiences publiques et de présenter un rapport au gouvernement ou au ministre des Finances accompagné, au besoin, de recommandations. Le déroulement de ces

enquêtes et les procédures sont, à bien des égards, analogues à ceux des enquêtes de préjudice sensible menées en application de

la LMSI.

Enquêtes sur des questions économiques et commerciales

Aux termes de l'article 18 de la Loi sur le TCEE, le Tribunal, sur saisine du gouvernement, enquête et lui fait rapport sur «toute question touchant, en matière de

marchandises ou de services, les intérêts économiques ou commerciaux du Canada».

Par exemple, ces études peuvent prendre la forme d'un examen des diverses solutions en vue d'une intervention gouvernementale pour aider certaines industries à s'adapter aux conditions économiques et commerciales changeantes, compte tenu des programmes existants, des lois, du contexte international ainsi que des obligations et des droits commerciaux du Canada. Les questions commerciales soumisees au Tribunal peuvent porter non seulement sur les importations, mais aussi sur l'expansion des exportations, et les conditions d'accès imposées aux exportations canadiennes. Le Tribunal a terminé au cours du dernier exercice une enquête sur la répartition des contingents d'importation et en a ouvert une autre sur la compétitivité des industries canadiennes de l'élevage des bovins et de la transformation du boeuf.

Enquête sur la répartition des contingents d'importation — GC-91-001

Membres du Tribunal : Macmillan
(membre président), Trudeau, Fraleigh

Mandat

• En août 1991, le gouvernement en conseil, sur la recommandation du ministre de l'Industrie, des Sciences et de la Technologie et ministre du Commerce extérieur, du ministre de l'Agriculture et du ministre des Finances, aux termes de l'article 18 de la Loi sur le TCEE, a ordonné au Tribunal d'enquêter sur les méthodes actuelles de répartition des contingents d'importation et sur des méthodes de remplacement. L'objet de cette enquête était de formuler des recommandations sur la meilleure ou sur les meilleures méthodes de répartition des contingents d'importation, à l'échelle nationale, des produits laitiers et avicoles gérés par l'offre, en considération des facteurs d'équité, de prévisibilité, d'efficacité économique, de transparence, d'entrée dans l'industrie, de réceptivité aux

également des bâtons de ski de marque distribués à des sociétés non liées en Italie, et que ces bâtons de ski de marque du distributeur étaient très proches des bâtons de ski de marque Scott. Le Tribunal a donc conclu que les bâtons de ski de marque de distributeur étaient des «marchandises similaires» pour les besoins de l'article 15 de la LMSI. En conséquence, le Tribunal a admis l'appel et ordonné au Sous-ministre de calculer la valeur normale des bâtons de ski de marque Scott en fonction des ventes des bâtons de ski de marque de distributeur aux sociétés non liées. (Ces conclusions ont été spécifiquement acceptées dans l'*Avis et ordonnance du groupe spécial* du groupe spécial binationnel dans l'affaire de la *Décision définitive de dumping rendue par Revenue Canada, Donovan et Accise, se rapportant aux tapis produits sur machines à tisser, originaires ou exportés des États-Unis d'Amérique*, le 19 mai 1993, à la p. 41.)

• Dans le second appel, l'appel n° AP-90-127, la question consistait à déterminer si le Sous-ministre avait correctement établi la valeur normale des bâtons de ski de marque Kastle en majorant le prix d'exportation de 47 p. 100 aux termes du paragraphe 29(1) de la LMSI. Le paragraphe 29(1) de la LMSI prévoit que «[l]a valeur normale [est] établie[] selon les modalités que fixe le ministre dans les cas où le sous-ministre est d'avis qu'il est impossible de les établir conformément aux articles 15 à 28 vu l'insuffisance ou l'inaccessibilité des renseignements nécessaires». De l'avis du Tribunal, c'était le Sous-ministre qui déterminait l'existence des conditions requises pour l'application des modalités prévues par la loi. Le fabricant et l'exportateur avaient toute la latitude nécessaire pour fournir des renseignements aux fins de l'établissement de la valeur normale précise, mais ont décidé de ne pas le faire. Le Tribunal a donc rejeté l'appel.

eut décidé, dans l'avis d'expiration n° LE-91-001 daté du 25 juillet 1991, de ne pas procéder à un nouveau réexamen.) Le Sous-ministre avait fondé son évaluation des droits antidumping à imposer sur la marge de dumping, c'est-à-dire sur l'excédent de la valeur normale des marchandises sur leurs prix à l'exportation depuis le pays exportateur ou tout pays autre que le Canada.

• Au coeur de l'appel n° AP-90-023 était l'interprétation de l'expression «marchandises similaires» qui figure dans l'article 15 de la LMSI et qui exige que la valeur normale soit fondée sur le prix des marchandises vendues dans le pays d'exportation à des acheteurs qui n'ont pas de lien avec l'exportateur. Le Sous-ministre avait décidé que les «marchandises similaires» vendues dans le pays d'exportation, en l'occurrence, l'Italie, étaient les bâtons de ski «identiques» aux bâtons de ski importés, en l'espèce, les bâtons de ski de marque Scott. Attendu que les bâtons de ski de marque Scott n'étaient vendus qu'à un seul client lié installé en Italie, le Sous-ministre a calculé la valeur normale aux termes de l'alinéa b) de la LMSI comme correspondant à la somme des montants suivants : i) le coût de production des bâtons de ski; ii) un montant pour les frais, notamment les frais administratifs et les frais de vente; et iii) un montant pour les bénéfices.

• De l'avis du Tribunal, cette façon de déterminer la valeur normale était erronée, parce qu'elle ne tenait pas compte de l'alinéa b) de la définition de «marchandises similaires» qui figure au paragraphe 2(1) de la LMSI, et qui définit les «marchandises similaires» comme étant, à défaut d'être des «marchandises identiques aux marchandises en cause», des «marchandises dont l'utilisation et les autres caractéristiques sont très proches de celles des marchandises en cause». Le Tribunal a conclu que l'exportateur des bâtons de ski de marque Scott vendait

vente ou location». Le Tribunal a souligné que le mot «destinées» faisait allusion à un événement futur. Par conséquent, les composants destinés aux marchandes fabriquées n'étaient pas exclus du champ d'application de l'article 120 de la *Loi sur la taxe d'accise* dans la mesure où ces dernières étaient destinées à une fourniture taxable. Quant aux composants déjà intégrés à des produits finis, ils figuraient également à l'inventaire de l'appelant au 1^{er} janvier 1991 à condition que les produits finis figuraient à l'inventaire de l'appelant.

Fletcher Leisure Group Inc. c. Le sous-ministre du Revenu national pour les douanes et l'accise — Appels
n^{os} AP-90-023 et AP-90-127

Décisions : Appel n^o AP-90-023 admis et renvoyé au Ministre et appel n^o AP-90-127 rejeté (le 19 mars 1993)

Membres du Tribunal : Trudeau (membre président), Fraleigh, Hallissey

• Ces deux appels concernaient des décisions rendues par le Sous-ministre relativement à la valeur normale de bâtons de ski de marque Scott importés pendant la période allant du 18 juillet au 9 novembre 1988 par Fletcher Leisure Group Inc., décisions prises pour les besoins de l'évaluation des droits antidumping à imposer sur les bâtons de ski visés par des conclusions de préjudice sensible rendues par le Tribunal antidumping le 14 mai 1984 relativement à des bâtons de ski alpin en alliage d'aluminium originaires ou exportés de la France et de l'Italie. Les conclusions de préjudice sensible rendues par le Tribunal antidumping le 14 mai 1984 ont été le cadre de l'enquête n^o ADT-5-84 ont été prorogées par le TCI le 23 décembre 1986 dans le cadre du réexamen n^o R-8-86, mais sont venues à expiration le 22 décembre 1991 après que le Tribunal

remboursement de la TVF à l'inventaire visé par l'article 120 de la *Loi sur la taxe d'accise* pour les composants qu'il avait achetés à un prix comprenant la TVF et faisant partie de son inventaire le 1^{er} janvier 1991, soit à titre de composants dans leur état de réception, soit à titre d'éléments intégrés à des produits finis.

• Le représentant de l'appelant a essentiellement fait valoir que, si le remboursement n'était pas accordé, la taxe serait perçue deux fois sur les mêmes composants, car la TPS s'ajouterait aux produits fabriqués renfermant des matériaux sur lesquels la TVF avait déjà été payée. À son avis, cela ne reflétait pas l'objet de la disposition sur le remboursement de la TVF.

• Le Tribunal a admis l'appel. Il a constaté, en premier lieu, que la cause comportait des éléments de double imposition, car les marchandes fabriquées par l'appelant seraient assujetties à la TPS même si elles renfermaient des composants sur lesquels la TVF avait été payée. Le Tribunal a estimé que, à titre de principe de la législation fiscale, il n'y a double imposition que si celle-ci est équitable ou que si le libellé de la loi d'imposition est clair et sans équivoque. Le Tribunal a également déclaré qu'il ne faisait aucun doute que les composants en question étaient des «marchandises libérées de taxe» au sens de l'article 120 de la *Loi sur la taxe d'accise*, qu'une bonne part de ces composants faisaient également partie de l'inventaire de l'appelant au 1^{er} janvier 1991 et que les autres avaient été intégrés à des marchandes fabriquées par l'appelant, lesquelles faisaient aussi partie de son inventaire à cette date. Le Tribunal était d'avis que les deux types de marchandes figuraient à l'inventaire de l'appelant et étaient destinées à la fourniture taxable ou, comme le prévoit la définition du terme «inventaire», étaient «destinées à la fourniture taxable [...] par

- Les appels ont été rejétés. L'autorisation d'interjeter appel à la Cour fédérale du Canada a été refusée.

Technouch Business Systems Ltd. c. Le ministre du Revenu national — Appel n° AP-91-206

Décision : Appel admis en partie (le 19 septembre 1992)

Membres du Tribunal : Fraleigh (membre président), Gracey, Hallissey

- En 1990, le Parlement a créé les parties VIII et IX de la *Loi sur la taxe d'accise*. La partie VIII traite des dispositions transitoires qui ont été adoptées en vue d'éviter la double imposition des marchandises figurant à l'inventaire au 1^{er} janvier 1991, en raison de l'entrée en vigueur des dispositions relatives à la TPS (partie IX). L'article 120 de la partie VIII prévoit un remboursement de la TVF à l'inventaire. Conformément au paragraphe 120(5) de la *Loi sur la taxe d'accise*, un remboursement peut être versé, à l'égard d'un inventaire qu'une personne détient au 1^{er} janvier 1991, correspondant au montant calculé selon une méthode prescrite utilisant des facteurs prescrits qui sont prévus par le *Règlement sur le remboursement de la taxe de vente fédérale à l'inventaire* pris par le ministre des Finances le 18 décembre 1990 (DORS/91-52, *Gazette du Canada* Partie II, vol. 125, n° 2 à la p. 265).

- Le 29 janvier 1991, l'appelant, *Technouch Business Systems Ltd.*, a réclamé un remboursement de la TVF à l'inventaire. La demande de remboursement portait sur des composants dans leur état initial et sous forme de composants de produits finis figurant à l'inventaire de l'appelant. Le litige portait principalement sur la question de savoir si l'appelant avait droit au

Toutefois, en précisant que certains montants doivent être ajoutés dans le calcul de la valeur transactionnelle des marchandises, la *Loi sur les douanes* tient compte de cette situation lorsqu'elle stipule que « le prix payé ou à payer » pour des marchandises doit être « ajusté par addition » de certains montants « dans la mesure où ils n'y ont pas déjà été inclus ». Selon le libellé de la loi, il n'importe pas que les frais aient été exigibles au moment de l'importation, de la vente des marchandises ou à tout autre moment.

- Le Tribunal a considéré la redevance comme un paiement relatif aux marchandises. Les témoins pour l'industrie ont précisé que la redevance à payer à l'égard d'un enregistrement sonore particulier variait selon le prix de lancement de l'enregistrement. Étant donné que ce prix était fonction de l'artiste et du coût de production des marchandises, la redevance à payer pour différents enregistrements sonores pouvait différer. Il ne s'agissait pas d'un paiement général indépendant des enregistrements sonores particuliers. Il s'agissait plutôt d'un paiement qui était fonction des marchandises particulières vendues.

- Le Tribunal a également conclu que le versement de la redevance était une condition de la vente des marchandises pour leur exportation au Canada. À son avis, sans le contrat signé à la redevance qui précisait sans équivoque l'obligation de verser la redevance, l'appelant n'aurait pas pu acheter les enregistrements sonores des sociétés étrangères affiliées ni les importer au Canada. Ainsi, l'achat des marchandises importées ne pouvait pas être dissocié du versement de la redevance. Par conséquent, la redevance a été versée en tant que condition de la vente des marchandises pour leur exportation au Canada.

• Le Tribunal a reconnu que la redevance ne devait être payée qu'au moment de la vente des enregistrements sonores au Canada par Polygram Inc. et non lorsque les enregistrements ont été importés au Canada ou vendus à l'appelant par la société-mère ou une société affiliée.

Le premier critère n'a pas été contesté. Pour leur exportation au Canada, condition de la vente des marchandises marchandises; et 3) le paiement était une paiement était effectué à l'égard des acquitté directement ou indirectement; 2) le une redevance ou un droit de licence *Lot sur les douanes* : 1) le versement était assujettie au sous-alinéa 48(5)(iv) de la déterminer si la redevance versée était

• Trois critères principaux ont permis de assujettie aux droits de douane. *douanes* et, par conséquent, avoir été sous-alinéa 48(5)(iv) de la *Loi sur les sonores* importés conformément au transacationnelle des enregistrements B.V. aurait dû être ajoutée à la valeur globale» versée par l'appelant à Polygram consistait à déterminer si la «redevance

• La question dans les présents appels est de savoir si la «redevance globale» qui a été calculée en fonction du «prix au détail net». Polygram B.V. une «redevance globale» enregistrements au public. En contrepartie ainsi que distribuer et vendre les des artistes du répertoire de Polygram B.V. a pu faire la promotion de la musique et avec Polygram B.V. aux termes duquel il L'appelant a passé un contrat de licence

Record Service B.V. (Polygram B.V.) et de enregistrements importés étaient prêts pour la revente sur le marché canadien. Au moment de l'importation, les fabricants étrangers de Polygram ont facturé à Polygram Inc. le coût de fabrication des enregistrements.

comparativement à 88 au cours de l'exercice précédent. De plus, le nombre d'appels qui ont été entendus est passé de 96 à 183. Néanmoins, l'arrêt d'appels du Tribunal s'est accru au cours de l'exercice 1992-1993, le Tribunal ayant reçu le plus grand nombre d'appels depuis sa création. Comme prévu, le nombre de causes reliées à la TVF n'a pas augmenté et il diminuera vraisemblablement bientôt. Cependant, le nombre d'appels interjetés en application de la *Loi sur les douanes* et la LMSI a augmenté considérablement. Par exemple, les appels interjetés aux termes de la *Loi sur les douanes* représentent 44 p. 100 du total des nouveaux appels que le Tribunal a reçus au cours de l'exercice 1992-1993, comparativement à 25 p. 100 du total des appels lors de l'exercice 1991-1992.

Des 129 décisions rendues au cours du dernier exercice, 17 ont été portées en appel devant la Cour fédérale du Canada. De l'ensemble des décisions rendues au cours des trois derniers exercices financiers, 33 font actuellement l'objet d'appels à la Cour fédérale du Canada.

Plusieurs décisions rendues par le Tribunal à la suite de causes qu'il a entendues dans le cadre de ses fonctions relatives aux appels ont été marquées, que ce soit en raison de la nature inhabituelle du produit qui a fait l'objet du litige ou de l'importance juridique de la cause. Des résumés d'un échantillon représentatif de ces causes sont donnés ci-après. Ces sommaires ont été préparés uniquement à titre informatif. Leur but est de renseigner le lecteur et ils n'ont aucun statut légal.

Polygram Inc. c. Le sous-ministre du revenu national pour les douanes et l'accise — Appels n°s AP-89-151 et AP-89-165

Décisions : Appels rejetés (le 7 mai 1992)

Membres du Tribunal : Macmillan (membre président), Hines et Coates

• L'appelant, Polygram Inc., a importé des enregistrements sonores de Polygram

L'annexe D (organigramme D-1) renferme un schéma qui indique les étapes habituelles de la procédure applicable à un appel interjeté à l'égard d'une décision rendue par Douanes et Accise.

Causes examinées au cours du dernier exercice

Au cours de l'exercice 1992-1993, le Tribunal a entendu 183 appels, dont 47 aux termes de la *Loi sur les douanes*, 123 aux termes de la *Loi sur la taxe d'accise*, 3 en application de la *Loi sur la taxe d'accise* et de la *Loi sur le droit à l'exportation de produits de bois d'oeuvre*, 9 conformément à la *LMST* et 1 aux termes de la *Loi sur le droit à l'exportation de produits de bois d'oeuvre*. Des décisions ont été rendues pour 129 causes, dont 104 qui ont été entendues au cours de l'exercice 1992-1993.

TABLEAU 4.1
DÉCISIONS RELATIVES AUX APPELS

Loi	Appel	Admis	Admis en partie	Rejeté				
					Loi sur les douanes	Loi sur la taxe d'accise	LMST	
38	13	5	20	43	84 ^{1,2}	33	8	43
7	3 ³	-	4	67	49	13	67	
129	49	13	67					

1. Trois de ces appels étaient également en application de la *Loi sur le droit à l'exportation de produits de bois d'oeuvre*.

2. En plus d'être admis en totalité ou en partie, six appels ont été renvoyés au Ministère.

3. Un appel a également été renvoyé au Ministère.

Les décisions relatives aux autres causes n'ont pas encore été rendues, mais elles devraient l'être bientôt. Le tableau D-1, à l'annexe D, renferme les décisions concernant les appels entendus au cours de l'exercice 1992-1993.

Le nombre d'appels que le Tribunal a entendus et sur lesquels il a statué au cours de l'exercice 1992-1993 a augmenté. En effet, 129 décisions ont été rendues

l'intime, soit l'avocat du ministère de la Justice, est requis. Si l'intime donne son consentement, il a la possibilité de soumettre un exposé. Par la suite, l'appelant peut fournir par écrit au Tribunal des commentaires supplémentaires avant que ce dernier étudie le dossier. En outre, l'article 25 exige qu'un avis public de l'intention de procéder à une audience fondée sur les dossiers soit publié dans la *Gazette du Canada* afin de permettre à toute autre personne intéressée de faire connaître son point de vue.

Habituellement, le Tribunal rend une décision sur les questions en litige dans les 120 jours suivant l'audience, avec motifs à l'appui. Dans les affaires d'envergure et complexes, le Tribunal peut s'accorder un délai quelque peu plus long avant de rendre sa décision.

Si l'appelant ou l'intime n'est pas d'accord avec la décision du Tribunal, il peut porter celle-ci en appel devant la Cour fédérale du Canada.

Le Tribunal a un arrêté d'appels portant sur la *Loi sur les douanes* et la *Loi sur la taxe d'accise* qui n'a cessé de s'accroître au cours des dernières années. Certains appels sont en instance devant d'autres cours. Les appels concernant la TPS sont entendus par la Cour canadienne de l'impôt. Une fois que le Tribunal aura entendu les appels interjetés sur la TVF, son travail sur les appels se limitera aux litiges concernant la *Loi sur les douanes* et la *LMST*. Le Tribunal a l'intention d'effectuer cette transition le plus tôt possible afin que les contribuables n'aient pas à attendre des années les décisions sur des causes ayant trait à la TVF après la mise en application de la TPS.

Le Tribunal a déjà amorcé l'examen des affaires en instance afin d'éliminer les causes pour lesquelles les appelants se sont désistés et fixer des dates d'audience pour les anciens appels. Une fois que les dates d'audience ont été arrêtées, le Tribunal fait tout son possible pour les respecter.

CHAPITRE IV

APPELS

Le Tribunal, entre autres fonctions, entend les appels interjetés à l'égard des décisions du ministre du Revenu national (le Ministre) ou du Sous-ministre. Les appels portent surtout sur des questions concernant les droits de douane et l'accise.

Les types les plus courants d'appels sont ceux à l'égard des décisions de Revenu Canada au sujet du classement des marchandises, lequel classement détermine le montant des taxes à payer ou le tarif qui doit s'appliquer. Invariablement, la partie qui en appelle de la décision croit qu'un autre classement visé par une taxe ou un tarif moins élevé convient mieux.

Bien que le Tribunal essaie d'être informel et accessible, la loi lui impose certaines procédures et certains délais, et il s'en impose lui-même pour être mieux en mesure d'offrir au public un service efficace et de qualité. Par exemple, un appel est interjeté par le dépôt d'un avis par écrit ou d'une lettre d'appel auprès du secrétaire du Tribunal dans le délai prescrit dans la loi aux termes de laquelle l'appel est interjeté.

Conformément aux Règles de procédure du Tribunal, la personne qui interjette appel (l'appelant) dispose alors de 60 jours en général pour déposer auprès du Tribunal un document appelé «mémoire». En règle générale, le mémoire indique la loi aux termes de laquelle l'appel est interjeté, les points en litige entre l'appelant et le Ministre ou le Sous-ministre (qui, en langage juridique, est appelé l'intimé) et les motifs pour lesquels l'appelant croit que la décision de l'intimé est incorrecte. Un exemplaire du mémoire doit également être remis à l'intimé.

L'intimé doit aussi respecter des délais et suivre une procédure établie. Habituellement, dans les 60 jours qui suivent la réception du mémoire de l'appelant,

L'intimé doit remettre au Tribunal et à l'appelant un mémoire dans lequel la position de Revenu Canada est énoncée. Une fois ces formalités remplies, le secrétaire du Tribunal communique avec les deux parties pour fixer la date d'audience. Les audiences se déroulent habituellement en public, devant des membres du Tribunal.

Une personne peut défendre sa propre cause devant le Tribunal ou se faire représenter par un conseiller juridique ou par tout autre représentant. L'intimé est généralement représenté par un avocat du ministère de la Justice.

Les procédures à suivre au cours de l'audience ont été établies de sorte que l'appelant et l'intimé puissent tous deux avoir l'occasion de présenter leurs arguments. Elles permettent également au Tribunal d'obtenir les renseignements les plus justes pour prendre une décision. L'appelant présente d'abord sa version des faits de base, puis c'est au tour de l'intimé. Tout comme devant un autre tribunal, l'appelant et l'intimé peuvent citer des témoins à comparaitre pour appuyer leur position, et ces témoins peuvent subir un contre-interrogatoire mené par la partie adverse pour vérifier la validité de leur témoignage. Une fois tous les éléments de preuve présentés, les parties invoquent les arguments à l'appui de leur position respective.

L'appelant a aussi le choix d'une audience fondée sur les dossiers. Lorsqu'une audience n'est pas requise et que le Tribunal se propose de ne pas en tenir, ce dernier peut statuer sur l'affaire sur la foi des documents écrits à sa disposition. L'article 25 des Règles de procédure du Tribunal permet à ce dernier d'agir de cette façon lorsque les conditions suivantes sont respectées. L'appelant et l'intimé doivent se mettre d'accord sur les faits qui font l'objet de l'appel en déposant un exposé conjoint des faits, ou l'appelant doit soumettre un mémoire par écrit et obtenir, par écrit, de l'intimé son accord sur les faits contenus dans ce mémoire. Pour procéder selon l'article 25, le consentement de l'avocat de

recettes et entraîné une réduction correspondante des profits bruts pour Labatt et Molson. En se fondant sur cette évaluation, le Tribunal a conclu qu'à elle seule, la compression des prix appuyait la décision selon laquelle les importations en question avaient causé et causaient un préjudice sensible à Labatt et à Molson.

- Le 24 novembre 1992, G. Heileman Brewing Company Inc. et The Stroh Brewery Company ont déposé des requêtes demandant au groupe spécial d'examiner la décision rendue par le Tribunal sur renvoi. Les requêtes ont été acceptées le 4 décembre 1992, des mémoires et des réponses ont été déposés, et le groupe spécial a entendu les plaidoiries le 7 janvier 1993.

- Le 8 février 1993, la majorité des membres du groupe spécial a conclu que le Tribunal avait répondu avec précision à la question qui lui avait été renvoyée, qu'il avait suivi les directives du groupe spécial et qu'il était arrivé à une conclusion qui n'était pas manifestement déraisonnable et qui était étayée par les éléments de preuve versés au dossier. Pour ces motifs, la majorité des membres du groupe spécial a confirmé la décision sur renvoi rendue par le Tribunal.

Autres renseignements

L'annexe C renferme des renseignements détaillés sur les activités du Tribunal aux termes de la LMSI pour l'exercice 1992-1993. L'organigramme C-1 donne les détails des procédures suivies par Revenu Canada et le Tribunal concernant une enquête de préjudice. Une brochure intitulée *Enquêtes concernant le préjudice causé par le dumping et le subventionnement* est aussi disponible et renferme des renseignements sur la façon dont le Tribunal mène une enquête. Se reporter à l'annexe F pour la liste de publications pertinentes, y compris la brochure susmentionnée.

existait en Colombie-Britannique une concentration de bière sous-évaluée

le groupe spécial a rejeté l'argument de la partie plaignante voulant que le Tribunal n'ait pas correctement analysé la situation économique des producteurs de la totalité ou de la quasi-totalité de la production de bière en Colombie-Britannique, se fondant sur l'ensemble de l'industrie plutôt que sur ces producteurs en particulier;

- enfin, le groupe spécial a, par renvoi de la décision, ordonné au Tribunal de déterminer si le dumping de la bière originaires des États-Unis, plutôt que la présence d'importations sous-évaluées, causait un préjudice sensible aux producteurs de la totalité ou de la quasi-totalité de la production de bière en Colombie-Britannique. Le groupe spécial a expressément ordonné au Tribunal de préciser si la compression des prix ou tout autre préjudice fondé sur les prix imputable au dumping des importations en question justifiait la conclusion selon laquelle lesdites importations avaient causé, causaient ou étaient susceptibles de causer un préjudice sensible aux producteurs de la totalité ou de la quasi-totalité de la production sur le marché de la Colombie-Britannique.

- Le 9 novembre 1992, le Tribunal a rendu sa décision sur renvoi. En réponse à la question qui lui avait été renvoyée, le Tribunal a, dans l'analyse du préjudice, fait abstraction des frais liés au remplacement des bouteilles par des cannettes. Après que ces frais eurent été supprimés de leurs états de résultats, aussi bien Labatt Breweries of British Columbia (Labatt) que Molson Brewery B.C., Ltd. (Molson) ont continué d'enregistrer au cours de l'exercice 1991 des résultats financiers inférieurs à ceux de l'exercice 1988. Le Tribunal a conclu qu'entre ces mêmes années, les prix s'étaient compris de 5 p. 100, ce qui avait fait perdre des millions de dollars de

chapitre 19 de l'ALE au cours de l'exercice 1992-1993.

Deux des décisions du Tribunal examinées par un groupe spécial binational (tapis produit sur machine à tisser — NQ-91-006 et placoplatre — NQ-92-004) n'avaient toujours pas fait l'objet d'une ordonnance à la fin de l'exercice.

Quant à la troisième décision du Tribunal (bière — NQ-91-002), le groupe spécial binational a rendu son ordonnance. Voici un résumé de cette cause.

La bière originale ou exportée des États-Unis d'Amérique par Pabst Brewing Company, G. Heileman Brewing Company, Inc. et The Stroh Brewery Company, leurs successeurs et ayants droit, ou en leur nom, pour utilisation ou consommation dans la province de la Colombie-Britannique — NQ-91-002 Renvoi de la décision

Décision sur renvoi : Préjudice (le 9 novembre 1992)

Membres du Tribunal : Gracey (membre président), Fraleigh, Blouin

- Le 26 août 1992, le groupe spécial binational (le groupe spécial) a rendu son ordonnance dans le cadre de l'examen des conclusions de préjudice rendues par le Tribunal le 2 octobre 1991 au sujet de la bière originaire ou exportée des États-Unis pour utilisation ou consommation dans la province de la Colombie-Britannique.

- Le groupe spécial a confirmé les conclusions du Tribunal à tous les égards, sauf un :

- le groupe spécial a confirmé la décision du Tribunal selon laquelle le marché existant en Colombie-Britannique était un marché isolé;

- le groupe spécial a aussi confirmé la décision du Tribunal selon laquelle il

- Selon le Tribunal, la vive concurrence au niveau des prix qui avait caractérisé le marché canadien de la bicyclette se maintiendrait après l'imposition de droits antidumping. La concurrence étrangère et nationale garantirait l'accès des grandes surfaces, des distributeurs et, en bout de ligne, des utilisateurs de bicyclettes au Canada à une vaste gamme de modèles à des prix raisonnables.

- Le Tribunal était convaincu que les bicyclettes fabriquées au Canada étaient de haute qualité et que l'industrie nationale avait une capacité de production suffisante pour servir une part importante du marché canadien de la bicyclette. Dans les cas où les fournisseurs canadiens ne pouvaient répondre à la demande, il existait d'autres fournisseurs qui n'étaient pas assujettis aux mesures antidumping.

Examen judiciaire des décisions visées par la LMSI

Les décisions touchant l'imposition de droits antidumping ou de droits compensateurs peuvent être portées en appel devant la Cour fédérale du Canada. Deux décisions font présentement l'objet d'appel (voir le tableau C-8 de l'annexe C).

Examens par des groupes spéciaux binationaux

Dans les causes visant des marchandises en provenance des États-Unis, l'examen judiciaire de la Cour fédérale du Canada peut être remplacé par un examen d'un groupe spécial binational conformément aux modifications apportées à la LMSI à la suite de l'adoption de la Loi de mise en oeuvre de l'Accord de libre-échange entre le Canada et les États-Unis.

Trois des décisions rendues par le Tribunal ont fait l'objet d'un examen par un groupe spécial binational formé en vertu du

antidumping ou de droits compensateurs peut ne pas être dans l'intérêt public, il doit le signaler au ministre des Finances en lui transmettant un rapport des faits et motifs qui l'ont amené à rendre ses conclusions. De même, pendant une enquête de préjudice, les parties intéressées peuvent demander au Tribunal la possibilité de présenter des observations sur la question de l'intérêt public. Si le Tribunal décide d'entendre leurs observations, il le fait une fois que l'enquête de préjudice est terminée.

Au cours du dernier exercice, le Tribunal a dû exprimer son opinion sur la question de l'intérêt public dans une cause au sujet des bicyclettes et des cadres de bicyclettes en provenance de Taïwan et de la République populaire de Chine. Voici un bref résumé de cette cause.

Bicyclettes et cadres de bicyclettes en provenance de Taïwan et de la République populaire de Chine (NQ-92-002) — PB-92-001

Opinion : Réduction de droits antidumping non requise
(le 27 janvier 1993)

Membres du Tribunal : Trudeau (membre président), Coates, Hallissey

• Le 11 décembre 1992, le Tribunal a conclu que le dumping des bicyclettes en provenance de Taïwan et de la République populaire de Chine avait causé, causait et était susceptible de causer un préjudice sensible à la production au Canada de marchandises similaires et que le dumping provenait des mêmes pays, était susceptible de causer un préjudice sensible à la production au Canada de marchandises similaires. Au cours des délibérations, un certain nombre d'exposés écrits ont été présentés relativement à la question de l'intérêt public. Après avoir examiné ces exposés, le Tribunal était d'avis qu'il ne serait pas dans l'intérêt public de réduire les droits antidumping imposés à leur plein montant.

Avis donnés aux termes de l'article 37 de la LMSI

pour accéder de nouveau au marché canadien. Le Tribunal a aussi conclu que le volume de ces importations sous-évaluées serait probablement considérable et que ce dumping causerait un préjudice sensible.

Au cours de l'exercice 1992-1993, à six reprises, le Tribunal s'est vu demander son opinion à savoir si les renseignements et les éléments de preuve dont disposait le Sous-ministre indiquaient, de façon raisonnable, que le dumping des marchandises en question (certaines toiles d'acier au carbone laminées à chaud, traitées à chaud et certaines toiles d'acier allié résistant à faible teneur; certaines toiles d'acier au carbone laminées à chaud et certaines toiles d'acier allié résistant à faible teneur; certains produits plats de tôle d'acier au carbone laminés à chaud; certaines toiles d'acier laminées à froid; certains raccords de tuyauterie à pression; et un isolant préformé en fibre de verre pour tuyaux) avait causé, causait ou était susceptible de causer un préjudice sensible à la production au Canada de marchandises similaires.

La LMSI exige que le Tribunal donne son avis sur la question sans tenir d'audience, uniquement à partir des renseignements dont disposait le Sous-ministre lorsqu'il a pris sa décision. Pour les quatre premières causes, le Tribunal a conclu que les renseignements indiquaient, de façon raisonnable, un préjudice sensible. Les deux autres causes étaient en instance à la fin de l'exercice. (Se reporter aux tableaux C-5 et C-6 de l'annexe C.)

Question de l'intérêt public aux termes de l'article 45 de la LMSI

Si, pendant une enquête de préjudice, le Tribunal est d'avis que l'imposition de droits

qui confie aussi la production de certains albums photos à pochettes en sous-traitance au Canada, a soutenu qu'aucun élément de preuve n'avait été présenté qui laissait à penser que le dumping reprendrait à partir des pays visés et que les conclusions devaient donc être annulées.

- Le Tribunal a déterminé que le dumping était susceptible de reprendre si les conclusions étaient annulées. Les éléments de preuve faisaient état de l'importante capacité de production des albums photos en question non seulement en Asie, mais également en République fédérale d'Allemagne. Plusieurs témoins ont parlé d'une capacité excédentaire dans ces pays, capacité qui est surtout axée sur les exportations. De plus, les éléments de preuve ont indiqué une tendance de la part des pays visés à écouler à des prix abusivement bas sur d'autres marchés les albums photos en question et des albums photos qui sont des produits concurrents directs.

- Les éléments de preuve ont également indiqué que les prix des albums photos en question demandés par les producteurs ont baissé ces dernières années. En outre, la concurrence exercée par des exportateurs de pays qui n'avaient pas antérieurement pris part à l'activité du marché canadien s'était intensifiée au cours des dernières années. Le Tribunal était convaincu que, bien que Desmarais était techniquement avancée et malgré l'intégration verticale de ses opérations, elle restait sensible aux pressions que les prix exerçaient ainsi qu'au taux d'utilisation de la capacité de production. D'après les données financières présentées par Desmarais, il est apparu évident au Tribunal que même ce producteur canadien, qui est le plus important et le plus efficace, ne pourrait fonctionner de manière rentable si les prix canadiens continuaient à baisser et si sa part du marché continuait à s'effriter.

- Le Tribunal a conclu que les pays visés reprendraient probablement le dumping

ont allégué que les conclusions devaient être provoquées pour tous les pays visés. Desmarais a soutenu que, par sa nature même, l'industrie était vulnérable face à la pratique commerciale déloyale que constitue le dumping. Non seulement les albums photos sont un produit de consommation courant, mais ils sont achetés par un petit nombre de clients au Canada et sont donc sensibles aux prix. La production d'albums photos est en outre de nature capitalistique et, partant, sensible au niveau d'utilisation de la capacité de production. La production peut facilement et rapidement passer d'un pays vers un autre, et Desmarais a connu une longue histoire de préjudice causé par le dumping et cette pratique cause un préjudice à sa production d'albums photos de tous genres, y compris les albums photos en question.

- Climax Paper Converters, Limited (Climax), de Hong Kong, a été le seul exportateur qui ait participé à l'audience. Climax a aussi allégué qu'aucun élément de preuve n'avait été soumis quant à la reprise de dumping au Canada des albums photos en question si les conclusions étaient annulées. Elle a fait remarquer qu'elle n'avait pas pris part au marché canadien des albums photos en question depuis que les conclusions avaient été rendues en 1988 et qu'elle n'aurait nullement intérêt à y faire du dumping si les conclusions étaient annulées. Ses ventes d'albums photos à d'autres clients en Europe avaient augmenté considérablement ces dernières années, tandis que ses ventes aux États-Unis, où se trouvaient ses clients les plus importants, s'étaient stabilisées ou avaient légèrement baissé.

- Paget Industries Inc., un importateur-exportateur des albums photos en question

Le Tribunal a fait remarquer que le but des conclusions de préjudice initiales était de protéger la production canadienne contre le dumping préjudiciable. Comme les raccords pour soudure en bout ne sont plus produits au Canada, le Tribunal a considéré qu'il n'y avait pas lieu de proroger les conclusions.

Albums photos à pochettes et feuilles de rechange en provenance du Japon, de la République de Corée, de la République populaire de Chine, de Hong Kong, de Taïwan, de Singapour, de la Malaisie et de la République fédérale d'Allemagne (CIT-11-87) — RR-92-003

Ordonnance : Conclusions prorogées (le 25 février 1993)

Membres du Tribunal : Trudeau (membre président), Hallissey, Bergeron

Cette cause portait sur le réexamen des conclusions initiales de préjudice que le TCI avait rendues le 26 février 1988.

Le marché canadien des albums photos en question a augmenté régulièrement de 1988 à 1990, avant de régesser quelque peu en 1991 et en 1992. La croissance globale de 1988 à 1992 a été évaluée à 41 p. 100. Le principal producteur canadien des albums photos en question est Desmarais & Frère Ltée (Desmarais), de Longueuil (Québec). Belt Manufacture de Papeterie Ltée, de Montréal (Québec), et Techmatic Mfg. Inc. (Techmatic), de Brampton (Ontario), sont également d'importants producteurs des photos albums en question, bien que plus petits; Hutchings & Patrick Inc., d'Ottawa (Ontario), produit aussi des albums photos à pochettes, mais en très petites quantités. Desmarais et Techmatic

Le membre Hines n'a pas considéré que les éléments de preuve présentés dans cette cause appuyaient la prorogation des conclusions. Quoique les éléments de preuve montraient l'existence de dommages à bas prix en provenance des pays visés, rien n'indiquait qu'il s'agissait d'importations sous-évaluées. De plus, les importations de chaussures et de couvre-chaussures en caoutchouc imperméables ont diminué sensiblement au cours des dernières années et, dans certains cas, étaient négligeables. De plus, l'industrie a bénéficié de 13 ans de protection et a été rentable.

— RR-92-002

provenance du Japon (CIT-1-88)

Ordonnance : Conclusions annulées (le 13 novembre 1992)

Membres du Tribunal : Fraleigh (membre président), Trudeau, Hines

Thécossosavaquie, la Chine, la Corée et Taïwan au sujet de chaussures en plastique imperméables, un produit qui peut être aisément substitué aux chaussures et couvre-chaussures en caoutchouc imperméables.

Le membre Hines n'a pas considéré que les éléments de preuve présentés dans cette cause appuyaient la prorogation des conclusions. Quoique les éléments de preuve montraient l'existence de dommages à bas prix en provenance des pays visés, rien n'indiquait qu'il s'agissait d'importations sous-évaluées. De plus, les importations de chaussures et de couvre-chaussures en caoutchouc imperméables ont diminué sensiblement au cours des dernières années et, dans certains cas, étaient négligeables. De plus, l'industrie a bénéficié de 13 ans de protection et a été rentable.

— RR-92-002

provenance du Japon (CIT-1-88)

Ordonnance : Conclusions annulées (le 13 novembre 1992)

Membres du Tribunal : Fraleigh (membre président), Trudeau, Hines

Le Tribunal a envoyé à toutes les parties intéressées connues un avis faisant état du fait qu'il y avait lieu de procéder à un réexamen des conclusions en regard aux rapports selon lesquels Les Raccords MacLine Ltée (MacLine), le seul producteur canadien, avait cessé sa production. Les parties intéressées étaient invitées à soumettre leur avis afin de déterminer si les conclusions rendues devaient être annulées immédiatement ou non. L'avis précisait également qu'aucune audience publique n'était prévue.

Les exposés reçus des parties intéressées ont confirmé que MacLine avait effectivement fermé ses portes. Trois des

diminué de 17 p. 100 entre 1987 et 1991. Étant donné que les ventes de l'industrie sont restées relativement stables pendant cette même période, la part du marché de l'industrie est passée de 54 p. 100 à 69 p. 100. Le total des importations a baissé d'un tiers entre 1987 et 1991, ce qui a entraîné une réduction de leur part du marché qui est passée de 38 p. 100 à 31 p. 100. La part du marché des importations en provenance des pays visés a baissé de 14 points de pourcentage pendant la même période. La part du marché des importations en provenance des pays non visés a plus que doublé.

• La majorité de membres du Tribunal a constaté qu'en général les prix nationaux subissaient une pression à la baisse en raison d'un certain nombre de facteurs économiques, comme la récession. Les grandes surfaces se livraient également une concurrence acharnée sur le plan des prix, ce qui les obligeaient à s'approvisionner en marchandises à bas prix auprès de fournisseurs nationaux et étrangers.

• La majorité a également estimé que la grande capacité d'exportation des pays désignés, notamment celle de la Corée, de la Chine, de la Malaisie et de la Pologne, comme en font foi leurs imposantes livraisons destinées aux États-Unis, présentait un risque de dumping. Ce risque était mis en évidence par les éléments de preuve qui montraient que les chausures en question originaires des pays nommés pouvaient être exportées au Canada à un coût inférieur à leur coût de production au Canada.

• Le Tribunal a également pris note de données recueillies par Revenu Canada relativement à l'exécution des conclusions qui montraient que plusieurs des pays nommés avaient poursuivi le dumping des chausures et des couvre-chausures en caoutchouc imperméables au cours des cinq dernières années. De plus, Revenu Canada a rendu, le 7 octobre 1992, une décision provisoire de dumping contre la

d'avis que les conclusions avaient joué leur rôle.

• La décision du Tribunal d'annuler les conclusions initiales ne pouvait se fonder sur le fait que les actifs de l'exportateur nommé dans lesdites conclusions avaient changé de propriété, comme l'avaient demandé Du Pont Canada Inc. et Du Pont (U.K.) Ltd. Le paragraphe 43(1) de la LMSI, lu à la lumière de l'article 8 du Code antidumping du GATT, indique clairement que l'identification des fournisseurs vise à préciser la source du dumping. Un changement de propriété n'a donc pas de conséquences directes sur les conclusions.

Chausures et couvre-chausures en caoutchouc imperméables en provenance de la Tchécoslovaquie, de la Pologne, de la République de Corée, de Taiwan, de Hong Kong, de la Malaisie, de la Yougoslavie et de la République populaire de Chine (ADT-4-79, ADT-2-82, R-7-87) — RR-92-001

Ordonnance : Conclusions prorogées

(le 21 octobre 1992)

(dissidence du membre Hines)

Membres du Tribunal : Trudeau (membre président), Hines, Hallissey

• Des conclusions de préjudice ont été rendues pour la première fois en 1979. En 1982, des conclusions de préjudice ont été rendues une deuxième fois quant à certains pays qui n'avaient pas été nommés dans les conclusions de 1979. En 1987, ces deux conclusions ont été réexaminées et prorogées. Il s'agissait du second réexamen de ces conclusions. L'industrie a plaidé que ces dernières devaient être prorogées parce qu'elle est toujours vulnérable face à une reprise du dumping. Le marché national des chausures en caoutchouc imperméables était évalué à 28 millions de dollars en 1991. Il a

- Compte tenu de ces importants faits nouveaux relatifs à la production et aux importations sur le marché, le Tribunal a décidé d'annuler les conclusions rendues initialement.

Plaques pour impression offset produites par ou au nom de Howson-Algraphy du Royaume-Uni (CIT-4-87, R-4-88) —
RR-91-006

Ordonnance : Conclusions annulées
(le 22 mai 1992)

Membres du Tribunal : Coleman (membre président), Macmillan, Trudeau

• Du Pont Canada Inc. a demandé l'annulation immédiate des conclusions étant donné que Hoechst Canada Inc. (Hoechst), le seul producteur canadien, prévoyait mettre fin à ses activités de production au Canada. Le Tribunal a procédé à un réexamen sans tenir d'audience publique.

- À l'automne de 1991, le seul producteur canadien a annoncé son intention de cesser ses activités de production au Canada de plaques pour impression offset au plus tard en juin 1992. Le Tribunal est donc arrivé à la conclusion qu'il était impossible de justifier la prorogation des conclusions en l'absence d'une production au Canada ou de projets visant à assurer la production au Canada de marchandises similaires.

- Le Tribunal n'a pas trouvé convaincant l'argument de Hoechst selon lequel les conclusions devraient être prorogées jusqu'à la fin de 1992, après quoi les stocks canadiens des plaques pour impression offset auront été écoulés. Le Tribunal a fait remarquer que Hoechst avait annoncé son intention ferme de cesser ses opérations de production au pays au plus tard au milieu de l'année et que les besoins de ses clients pendant une bonne partie de 1992 seraient comblés à l'aide de produits importés. Le Tribunal était donc

- On huit clés brutes en forte demande pour approvisionner le marché canadien et les marchés d'exportation.

- Le Tribunal a remarqué qu'Ilico était sensible aux taux d'intérêt ainsi qu'aux taux de change et réagissait rapidement à l'évolution des conditions économiques. Il a déclaré que les effets de la conjoncture macro-économique sur Ilico, et en particulier sur ses coûts de production, seront le facteur déterminant du niveau de production d'Ilico au Canada. Le Tribunal a également pris note du témoignage d'Ilico selon lequel la suspension de la production au Canada n'avait aucun rapport avec une quelconque activité de Silca et a déclaré que, pour Ilico, la concurrence viendra surtout des importations en provenance des États-Unis. Les droits de douane auxquels étaient assujetties les clés brutes importées des États-Unis ont été supprimés en avril 1990, et Ilico et Silca ont convenu que les prix des clés brutes étaient uniformes de part et d'autre de la frontière canado-américaine.

- La situation avait également changé pour Silca. Depuis que les conclusions avaient été rendues, Silca Keys U.S.A. Inc. (Silca Keys), qui a pour mandat de fabriquer et de vendre tous les profils de clés brutes requis par un client aux États-Unis, au Canada et au Mexique, avait commencé sa production à son usine de l'Ohio. Cette usine n'a pas tardé à fabriquer 318 profils de clés brutes, y compris les clés brutes en forte demande que fabrique Ilico pour le marché canadien. En outre, la capacité de production de Silca en Italie était presque totalement accaparée par les marchés de l'Europe et du Moyen-Orient. Rien dans les éléments de preuve produits n'a amené le Tribunal à conclure que Silca Keys n'approvisionnerait pas le marché canadien. Le Tribunal a fait remarquer, en outre, que Silca ne pratiquait plus le dumping au Canada de clés brutes en provenance de l'Italie.

forme d'une érosion des prix et d'une baisse des recettes.

Cles brutes en provenance de l'Italie et produites par ou au nom de Silca S.p.A. de l'Italie, de ses successeurs et de ses cessionnaires (NQ-89-002) — RR-91-005

Ordonnance : Conclusions annulées (le 1^{er} juin 1992)

Membres du Tribunal : Trudeau (membre président), Gracey, Hallissey

• Les avocats de Silca S.p.A. (Silca) et de Klassen Bronze Limited, un importateur, ont demandé au Tribunal d'annuler les conclusions étant donné qu'Ilico Unican Inc. (Ilico), le seul producteur canadien, ne fabriquait plus les clés brutes.

• Le marché canadien des clés brutes est demeuré stable après les conclusions initiales rendues en 1989, avec des ventes annuelles évaluées à 40 millions d'unités. La part de ce marché détenue par Ilico au cours de la période allant de 1989 à 1991 s'est accrue de quelques points de pourcentage. Cependant, la proportion, parmi les ventes d'Ilico au Canada, de produits de fabrication canadienne a baissé sensiblement, alors que la production de produits importés a augmenté. Les importations de clés brutes étaient stables en 1990, mais leur volume s'est accru de 39 p. 100 en 1991, à la suite d'une importante augmentation des importations d'Ilico.

• Le Tribunal a constaté que la situation avait beaucoup changé sur le marché des clés brutes depuis les conclusions. Ilico avait réduit sensiblement la gamme des clés brutes fabriquées au Canada en transférant aux États-Unis la production de ces brutes faiblement ou moyennement demandées. En mai 1991, Ilico a suspendu sa production au Canada pour réduire les stocks. Elle a repris la production en février 1992 dans le but de produire sept

• Quant à la question de préjudice causé à une industrie régionale, l'importateur a déclaré qu'il n'y avait pas une concentration des importations sous-évaluées en Colombie-Britannique et que les importations sous-évaluées ne causaient pas de préjudice à la totalité ni à la quasi-totalité de la production en Colombie-Britannique. L'importateur a aussi avancé que les oignons en provenance des États-Unis accaparaient une part du marché plus importante parce qu'ils étaient de qualité supérieure à celle des oignons jaunes de la Colombie-Britannique. L'avocat a déclaré que les problèmes financiers de l'industrie de la Colombie-Britannique n'étaient pas attribuables au dumping, mais bien à la petite superficie consacrée aux plantations et à d'autres facteurs.

• Les oignons jaunes peuvent être entreposés pendant un an au plus et, de ce fait, toute mesure envisagée devait éviter de pénaliser les utilisateurs finals pendant la période où les producteurs ne pouvaient approvisionner le marché. Le 30 avril 1987, le TCI a exclu de ses conclusions de préjudice les oignons jaunes importés entre le 1^{er} avril et le 15 août de chaque année civile.

• Lorsque le Tribunal s'est penché sur la question de préjudice causé à une industrie régionale, il a conclu qu'en raison de la situation de production et d'établissement des prix aux États-Unis, les prix des États-Unis seraient, dans de nombreux cas, inférieurs aux valeurs normales fixées par le Revenu Canada. Il est probable qu'il y aurait concentration des importations sous-évaluées en Colombie-Britannique si les conclusions étaient annulées et ce dumping causerait un préjudice à la production d'oignons jaunes de l'industrie de la Colombie-Britannique. En arrivant à cette décision, le Tribunal était d'avis que l'annulation des conclusions causerait un préjudice sensible aux producteurs d'oignons jaunes de la Colombie-Britannique qui se manifesterait sous la

Oignons jaunes, en provenance des États-Unis, destinés à être utilisés ou consommés dans la province de la Colombie-Britannique (CIT-1-87) —

RR-91-004

Ordonnance : Conclusions protégées (le 22 mai 1992)

Membres du Tribunal : Hines (membre président), Macmillan, Fraleigh

• Pendant la campagne agricole de 1990-1991, environ 30,9 millions de livres (soit 4,9 millions de dollars) d'oignons jaunes ont été vendus sur le marché de la Colombie-Britannique. L'industrie de la Colombie-Britannique détenait 37 p. 100 de ce marché. Les importations en provenance des États-Unis détenaient principalement les 63 p. 100 restants. La part du marché de l'industrie de la Colombie-Britannique a diminué considérablement pendant la période faisant l'objet du réexamen.

• L'industrie nationale, qui englobe tous les producteurs d'oignons de la Colombie-Britannique, a soutenu que les conclusions devaient être protégées pour éviter la reprise du dumping préjudiciable des oignons jaunes en provenance des États-Unis. En outre, elle a prétendu que la Colombie-Britannique était un marché régional et a rejeté les arguments selon lesquels les producteurs de la Colombie-Britannique ne constituaient pas l'industrie nationale aux fins de la détermination du préjudice.

• Selon l'industrie nationale, si les conclusions étaient annulées, l'industrie de la Colombie-Britannique ne survivrait pas et l'annulation des conclusions entraînerait des pertes d'emplois à la fois dans les entreprises agricoles et dans les coopératives qui traitent, emballent et vendent les oignons jaunes.

conclusions ou s'il devait permettre aux (albums photos à pochettes et feuilles de rechange — LE-92-001), un réexamen a été entrepris, puisque les exposés que le Tribunal a reçus l'ont convaincu du bien-fondé de celui-ci. Quant à l'autre cause (outils de travail — LE-92-002), la décision n'avait pas été prise à la fin de l'exercice. Le Tribunal a également rendu sa décision concernant un avis d'expiration qu'il avait publié au cours de l'exercice 1991-1992 (chaussures et couvre-chaussures en caoutchouc imperméables — LE-91-007). Après avoir examiné les exposés reçus, le Tribunal était convaincu qu'un réexamen était justifié et a entrepris un réexamen.

TABLEAU 3.2 DÉCISIONS RELATIVES AUX RÉEXAMENS DES MESURES ANTIDUMPING		
Causes réexaminées	Conclusions annulées	Conclusions protégées
6	3	3

Les faits saillants des six réexamens que le Tribunal a effectué au cours de l'exercice 1992-1993 sont donnés ci-dessous. Comme pour les conclusions initiales, les membres du Tribunal ont effectué des visites à l'usine afin d'examiner eux-mêmes les procédés de fabrication au Canada et les installations. Quatre visites ont été effectuées dans le cadre des six réexamens, une visite étant prévue en moyenne dans la plupart des causes. Les estimations de la valeur du marché canadien des marchandises faisant l'objet du réexamen ont été fournies lorsque c'était possible. Dans trois des causes, ces renseignements sont omis car ils ne pouvaient être divulgués sans compromettre le caractère confidentiel des données fournies par les participants. Les ordonnances rendues par le Tribunal au cours de l'exercice sont énumérées en détail dans le tableau C-3 de l'annexe C.

Réexamens des conclusions de préjudice sensible

Le Tribunal peut réexaminer ses conclusions de préjudice sensible en tout temps, de sa propre initiative ou à la demande d'une partie intéressée. Le paragraphe 76(5) de la LMSI prévoit également que des conclusions de préjudice sensible sont automatiquement annulées cinq ans après la date à laquelle elles ont été rendues, à moins d'être réexaminées par le Tribunal. Le Tribunal avertit les parties huit mois avant la date d'expiration des conclusions. Si une partie dépose une demande de réexamen et que le Tribunal est convaincu du bien-fondé d'un réexamen, le Tribunal entreprendra celui-ci. L'objet d'un réexamen est de déterminer si les droits antidumping ou les droits compensateurs demeurent nécessaires. En ce faisant, le Tribunal détermine habituellement si le dumping est susceptible de reprendre ou si le subventionnement est susceptible de se poursuivre et, s'il y a lieu, si le dumping est susceptible de causer un préjudice sensible à l'industrie nationale. Dans le cadre d'un réexamen, le Tribunal suit des procédures semblables à celles de l'enquête initiale en matière de préjudice.

À la fin d'un réexamen, le Tribunal doit rendre une décision avec motifs à l'appui, en grande partie de la même façon que dans le cas d'une enquête de préjudice initiale. Si les conclusions sont annulées, les droits antidumping ou les droits compensateurs ne sont plus perçus sur les importations. Si le Tribunal protège les conclusions, il peut également modifier les conclusions initiales afin d'exclure un produit ou un pays.

Au cours du dernier exercice, le Tribunal a reçu une demande de réexamen d'une ordonnance avant sa date d'expiration (moteurs à induction — RD-92-001). La décision n'avait pas été prise à la fin de l'exercice 1992-1993. Le Tribunal a en outre publié deux avis d'expiration, invitant les parties intéressées à faire valoir leur points de vue à savoir s'il devait proroger les

• Le Tribunal a fait remarquer que, quoique Heinz et Nabisco eussent décidé de suspendre la production de pâte de tomate destinée à la vente à l'industrie pour l'année d'exploitation 1992, le Sous-ministre avait constaté que 46 p. 100 seulement des importations depuis les États-Unis au cours de la première moitié de 1992 avaient été sous-évaluées. De plus, les prix de la pâte de tomate en provenance des États-Unis, qui étaient d'environ 0,27 \$ US/lb F.A.B. en Californie pendant la période qui a fait l'objet de l'enquête du Sous-ministre, ont commencé à se raffermir pendant la deuxième moitié de 1992. Les éléments de preuve ont indiqué que les prix ont augmenté jusqu'en février 1993, mois au cours duquel le prix de la pâte de tomate était d'environ 0,34 \$ US/lb F.A.B. en Californie.

• Pour ce qui est de l'avenir, le Tribunal a constaté qu'il ressortait des témoignages entendus et des éléments de preuve déposés que les prix se maintiendraient probablement à la hausse en 1993. Quoique les stocks existants en Californie demeurent importants, les éléments de preuve ont montré qu'une bonne partie de ces stocks étaient engagés. De même, selon certaines indications, la récolte américaine de 1993 pourrait être d'environ 8 millions de tonnes, ce qui est un chiffre assez moyen. Une récolte exceptionnelle pourrait modifier la situation future du marché aux États-Unis, mais le Tribunal a estimé que ce serait de la pure spéculation de sa part que de supposer que ceci puisse conduire au dumping et à un préjudice sensible pour les producteurs canadiens de pâte de tomate.

• Le Tribunal a donc conclu que le dumping au Canada de la pâte de tomate en provenance des États-Unis n'avait pas causé, ne causera pas et n'était pas susceptible de causer un préjudice sensible à la production au Canada de marchandises similaires.

Conclusions : Aucun préjudice (le 30 mars 1993)

Membres du Tribunal : Hines (membre président), Trudeau, Bergeron

• L'industrie nationale se compose de La Compagnie H.J. Heinz du Canada Liée (Heinz), de Nabisco Brands Liée/Division de l'épicerie (Nabisco) et de Sun-Brite Canning Limited. La pâte de tomate est produite dans des installations situées dans le sud-ouest de l'Ontario. La taille du marché national est confidentielle, les principaux intervenants étant peu nombreux.

• Lors de la conférence préparatoire à l'audience, le Tribunal a décidé que la production nationale de marchandises similaires comprenait la production destinée à la vente à l'industrie aussi bien que la production destinée à un usage interne.

• Les parties plaignantes ont soutenu que les importations sous-évaluées avaient causé un préjudice à la production nationale de pâte de tomate destinée à la vente à l'industrie qui s'était manifesté sous la forme de pertes de production, de ventes, de part du marché et de marges bénéficiaires, d'érosion de prix et de réduction de l'utilisation de la capacité de production. Le principal élément de preuve relatif à l'existence d'un préjudice consistait en la suspension complète de la production de pâte de tomate destinée à la vente à l'industrie pour l'année d'exploitation de 1992 par les deux plus importants producteurs, Heinz et Nabisco. En outre, les parties plaignantes ont soutenu que les produits à base de tomate faits à partir de la pâte de tomate importée à des prix sous-évalués ont un avantage économique sur les produits à base de tomate faits à partir de la pâte de tomate produite au Canada. C'est pourquoi les producteurs nationaux de produits à base

de tomate faits à partir de la pâte de tomate produite au Canada ont été contraints de baisser leurs prix pour maintenir leurs volumes de ventes, et, de ce fait, leurs marges bénéficiaires ont diminué.

• Heinz et Nabisco représentant plus de 90 p. 100 de la production totale de pâte de tomate au Canada, le Tribunal s'est concentré sur les résultats financiers de ces deux sociétés pendant la période visée par l'enquête.

• Heinz a soutenu avoir perdu, en 1991, deux de ses plus importants clients en raison principalement des importations sous-évaluées américaines. Cependant, il est ressorti de la déposition des témoins de ces clients que d'importants problèmes de qualité s'étaient posés à ces derniers relativement au produit de Heinz et qu'ils avaient augmenté leurs achats de pâte de tomate américaine pour des raisons de qualité plutôt que de prix. Quoique le volume des ventes perdus représentait une partie importante des ventes de Heinz à l'industrie, le Tribunal a fait remarquer que ce volume comptait pour une petite partie de sa production totale de pâte de tomate.

Le Tribunal a également constaté que le pourcentage de marge bénéficiaire brute réalisé sur les produits fabriqués par Heinz à partir de la pâte de tomate était très satisfaisant et s'était amélioré en 1991 et 1992.

• Pour ce qui est de Nabisco, le Tribunal a constaté que cette société avait perdu quelques ventes au profit des importations américaines en 1991. Cependant, ces pertes étaient très faibles relativement à l'augmentation de la production de pâte de tomate aux fins internes de la société cette même année. Quoique les résultats financiers concernant les produits à base de tomate de Nabisco n'aient peut-être pas été aussi positifs que la société l'aurait souhaité, ces résultats, de l'avis du Tribunal, n'avaient pas grand chose à voir avec le dumping.

sous-évaluées. Même s'il a pu y avoir compression des prix dans une certaine mesure, cette dernière n'a pas été assez importante pour causer un préjudice sensible.

- Dans le cas des chausures imperméables en plastique, quoiqu'une part importante des importations examinées par Revenu Canada était sous-évaluée, le Tribunal a conclu que l'industrie n'avait pas fourni de renseignements ni de preuves solides de préjudice passé et présent en ce qui a trait à la perte de ventes, à la compression des prix ou à une baisse de la rentabilité. De plus, l'industrie n'avait pas démontré que la situation changerait probablement dans un avenir rapproché de façon à causer un préjudice. En ce qui a trait aux dessous de boîtes, très peu d'éléments de preuve ont été présentés.

- Le membre Gracey a exprimé sa dissidence au sujet du préjudice futur touchant les boîtes d'hiver imperméables importées de la République fédérative ichèque et de la République populaire de Chine. Il estimait que les importations de boîtes sous-évaluées continueraient à augmenter si des conclusions de préjudice sensible n'étaient pas rendues et que la Chine deviendrait une source encore plus importante d'importations une fois que les grands producteurs-exportateurs de Taiwan auront déménagé leurs installations en Chine. Sur la foi des éléments de preuve, M. Gracey était porté à croire que le maintien de la tendance des importations de plus en plus et que cette compression des prix serait plus importante. Pour ce qui est de la République fédérative ichèque et slovaque, M. Gracey était d'avis que, si des conclusions de préjudice futur n'étaient pas rendues, les importations sous-évaluées provenant de cette source continueraient à augmenter.

huit producteurs. L'industrie a fait valoir que le préjudice causé par le dumping avait pris la forme d'une perte de ventes, d'une compression des prix, d'une perte de rentabilité et d'une perte d'emplois. Le marché national des chausures imperméables en plastique (à l'exclusion du marché des dessous en caoutchouc ou en plastique) avait été estimé à plus de 40 millions de dollars en 1991.

- De 1989 à 1991, soit en trois ans, le marché apparent des produits finis en question (chaussures à dessous imperméable en plastique et à dessus non en cuir [boîtes d'hiver] et chausures imperméables en plastique [boîtes pour la pluie]) a enregistré une croissance de 23 p. 100. La part du marché des producteurs nationaux a baissé pour passer de 99 à 90 p. 100, et les importations des pays visés sont passées de 1 p. 100 à 8 p. 100. Au cours de la période faisant l'objet de l'enquête, le marché des boîtes d'hiver imperméables représentait environ 80 p. 100 du marché apparent total, et celui des boîtes pour la pluie, les 20 p. 100 restants. Pour ce qui est des dessous, au cours de la période visée par l'enquête, le marché apparent total oscillait entre 4,4 et 5,2 millions de paires, tandis que les importations représentaient quelque 2 p. 100 du marché total, la plupart de ces importations provenant de pays non visés.

- Le Tribunal était d'avis que, bien que l'industrie ait perdu une part du marché au cours de la période visée par l'enquête, cette perte était attribuable en grande partie aux importations qui n'ont pas fait l'objet de dumping. Les éléments de preuve ont indiqué fortement que la concurrence entre les producteurs est vigoureuse, que les producteurs canadiens se font concurrence au niveau des prix, concurrence que les détaillants encouragent. Le Tribunal était d'avis que cette concurrence constante au sein de l'industrie et l'activité accrue au chapitre des importations avaient plus d'effet sur les prix que le volume relativement faible des importations

- Entre 1988 et juillet 1992, le marché de la Colombie-Britannique est demeuré assez stable. La part du marché détenue par l'industrie du chou-fleur de la Colombie-Britannique a reculé de 2 points de pourcentage au profit des importations en provenance des États-Unis au cours de cette période. Les prix de vente en Colombie-Britannique étaient supérieurs aux coûts de production des producteurs de la province (selon les estimations du ministre de l'Agriculture, des Pêches et de l'Alimentation de la province de la Colombie-Britannique) pendant chaque campagne agricole entre 1988 et 1990, et l'industrie est demeurée rentable tout au long de cette période. En 1991, les prix F.A.B. aux États-Unis ont sensiblement reculé, d'où l'érosion des prix de vente en Colombie-Britannique et la perte de rentabilité de l'industrie. Malgré des pertes de profits en 1991, l'industrie a accru le volume de ses ventes et sa part du marché, alors que le marché global a reculé de 8 p. 100. En 1992, les prix de vente aux États-Unis et en Colombie-Britannique se sont raffermis avant l'imposition de droits antidumping, et l'industrie est redevenue très rentable. Comme le prix de vente moyen en Colombie-Britannique était de 12,49 \$ le carton et que le coût de production estimatif s'établissait à 9,92 \$, l'industrie a réalisé un bénéfice de 20 p. 100 au chapitre des ventes en 1992.
- Selon les éléments de preuve recueillis par le Tribunal, certains producteurs ont choisi de réduire leurs plantations après la campagne agricole de 1991, mais le plus important producteur de la Colombie-Britannique, qui avait augmenté sa plantation en 1990 et subi des pertes en 1991, a décidé d'exploiter la même plantation et a réalisé un bénéfice en 1992.
- L'industrie nationale a été rentable pendant quatre des cinq années étudiées dans le cadre de l'enquête. De l'avis du Tribunal, 1991 a été une année d'exception en ce qui

préjudice futur avaient été rendues relativement aux composants parce qu'autrement, les conclusions de préjudice sensible rendues à l'égard du produit fini auraient été contrecarées. Le Tribunal considérerait que les points de vue exposés dans ces causes étaient tout aussi valables dans la présente cause.

- Le Tribunal était d'avis qu'une exclusion s'imposait dans le cas des bicyclettes à prix élevé, c'est-à-dire dont le prix de vente commence à 325 \$ CAN F.A.B. pays d'origine. Le Tribunal était d'avis que, compte tenu du volume des ventes peu élevé des parties plaignantes ainsi que du caractère peu élevé de la sensibilité aux prix, un préjudice sensible n'avait pas été subi dans le secteur haut de gamme du marché.

Chou-fleur frais, en provenance des États-Unis, pour utilisation ou consommation dans la province de la Colombie-Britannique — NQ-92-003

Conclusions : Aucun préjudice
(le 4 janvier 1993)

Membres du Tribunal : Coates (membre
président), Trudeau, Hallissey

- Le marché de la Colombie-Britannique pour le chou-fleur frais totalise près de 4 millions de dollars. La partie plaignante était la B.C. Vegetable Marketing Commission (la Commission). L'industrie comprend environ 23 producteurs qui vendent leurs produits par l'entremise de 3 agences agréées par la Commission. Cette dernière soutenait que le dumping avait causé un préjudice sensible qui s'était manifesté sous la forme d'une érosion des prix, d'une perte de rentabilité, d'une baisse des ventes et d'une réduction des plantations de chou-fleur.

- Le Tribunal était convaincu que l'industrie de la Colombie-Britannique constituait un marché régional au sens de l'article 4 du Code antidumping du GATT et qu'il y avait concentration des importations sur le

décision provisoire de dumping. Le Tribunal n'était pas convaincu que le préjudice sensible était causé par des facteurs non liés aux prix. Les éléments de preuve ont montré que les résultats des parties plaignantes, en ce qui a trait à la qualité des produits, à l'éventail des produits, aux livraisons, aux taux de retour et à l'aspect esthétique, n'avaient rien à envier à ceux des fournisseurs étrangers. Qui plus est, le bien-fondé des allégations de la capacité de production nationale aurait causé l'augmentation subite des importations n'a pas été établi.

• Pour ce qui est de l'avenir, le Tribunal a fait remarquer qu'il s'agissait de la deuxième enquête sur le dumping préjudiciable de bicyclettes et de cadres de bicyclettes. La première enquête portait sur Taiwan et la Corée du Sud. Après un hiatus de plusieurs années, le dumping des bicyclettes en provenance de Taiwan avait repris. De plus, dans la présente cause, l'existence du dumping avait été constatée relativement à la Chine, où plusieurs grandes installations de production avaient été financées par des capitaux taiwanais. Ceci a laissé clairement penser au Tribunal qu'en l'absence de la discipline imposée par des conclusions de préjudice, le dumping était susceptible de se poursuivre à l'avenir.

• Pour ce qui est du préjudice à la production de cadres de bicyclettes, le Tribunal a fait remarquer que la première décision relative aux bicyclettes (*Bicyclettes assemblées ou démontées, et cadres de bicyclettes, fourches, guidons en acier et roues [neus et chambres à air non compris], originaires ou exportés de la République de la Corée et de Taiwan* — ADT-11-77) et que la décision relative à la cause des pinceaux (*Pinceaux utilisant la soie de porc comme matière de filament, et parties constituantes appelées «Heads» (têtes), originaires ou exportés de la République populaire de Chine* — ADT-6-84) avaient établi un précédent. Dans les deux cas, des conclusions de

de détérioration des résultats financiers, de réduction de l'emploi et de l'utilisation de la capacité de production, ainsi que de reports d'investissements. En 1991, les ventes des producteurs nationaux et étrangers au Canada s'élevaient à environ 150 millions de dollars.

• Le Tribunal a constaté qu'un déplacement radical et rapide des parts du marché s'était produit pendant la période allant de 1988 au milieu de 1992. La part du marché de l'industrie a diminué, passant des trois quarts à un peu plus d'un tiers au cours de cette période, soit une perte totale de 38 points de pourcentage. Pendant cette même période, les importations combinées depuis Taiwan et la Chine ont presque triplé, atteignant 727 000 unités, et leur part du marché a connu une nette augmentation de 39 points de pourcentage. De plus, l'augmentation subite des importations a délogé les ventes nationales des deux principaux canaux de distribution, en l'occurrence, les grandes surfaces et les distributeurs indépendants.

• Les éléments de preuve ont montré que la hausse de la demande de bicyclettes à prix peu élevé a été satisfait par les importations de bicyclettes taiwanaises et chinoises, et surtout par ces dernières depuis 1991. Les données relatives aux importations ont clairement montré qu'il existait une concentration de bicyclettes en question provenant de ces deux pays dans le secteur du marché des produits à bas prix, qui est très concurrentiel et très sensible aux prix. En raison des pertes de ventes et de parts du marché, l'industrie a subi des pertes de recettes considérables et une chute brutale corrélative des bénéfices bruts. Ses niveaux d'emplois ont également baissé.

• Le Tribunal a constaté qu'il existait un lien de causalité évident entre le préjudice sensible subi par les parties plaignantes et les importations sous-évaluées, et a remarqué qu'un retour massif aux produits nationaux avait eu lieu au cours de la période qui a précédé et fait suite à la

• Pendant les campagnes agricoles de 1988 à 1991, le marché de la laitue (pomme) Iceberg fraîche en Colombie-Britannique a connu une croissance de 47 p. 100, alors que l'industrie de la Colombie-Britannique a vu sa part du marché chuter de 24 points de pourcentage au profit des importations des États-Unis, et surtout de la Californie. La majorité des membres du Tribunal a déclaré que la perte de la part du marché était attribuable à la présence des importations à faible prix au cours de cette période, lesquelles ont été sous-évaluées pendant la campagne agricole de 1991. Avant cette même campagne, l'industrie avait réduit ses pertes financières. Or, au cours de la campagne agricole de 1991, les prix F.A.B. aux États-Unis se sont effondrés, ce qui a entraîné le dumping de la laitue des États-Unis sur le marché de la Colombie-Britannique. Ce dumping a causé une érosion des prix de vente et d'importantes pertes financières pour l'industrie. Pour contre ces pertes, un certain nombre de producteurs de la Colombie-Britannique ont réduit leurs plantations lors de la campagne agricole de 1992, alors que d'autres ont cessé de produire la laitue (pomme) Iceberg fraîche. Pendant la campagne agricole de 1992, les prix de vente se sont raffermis, tant aux États-Unis qu'en Colombie-Britannique, et l'industrie de la Colombie-Britannique est redevenue rentable.

• La majorité des membres du Tribunal était d'avis que la tendance à appliquer de très faibles prix pendant de longues périodes au cours de chaque campagne agricole à l'étude indiquait que le dumping préjudiciable se poursuivrait sans doute en l'absence de droits antidumping. Aux termes des conclusions du Tribunal, les périodes allant du 1^{er} janvier au 31 mai et du 16 octobre au 31 décembre de chaque année civile ont été exclues, car les producteurs de la Colombie-Britannique n'approuvaient habituellement pas le marché au cours de ces périodes et ne peuvent donc pas subir un préjudice sensible. Le Tribunal a déclaré, en outre,

que rien ne justifiait l'exclusion d'un type d'emballage quelconque de la laitue (pomme) Iceberg fraîche à l'application des conclusions de préjudice sensible.

• Le membre Coleman a convenu, à l'instar de la majorité des membres du Tribunal, que l'industrie de la Colombie-Britannique constitue un marché régional, mais ne croyait pas qu'il y avait concentration des importations. Il a admis l'existence d'éléments de preuve concernant le préjudice subi par l'industrie de la Colombie-Britannique, mais a conclu que ceux-ci étaient attribuables à des facteurs autres que le dumping. Il a constaté qu'en 1991, la production des producteurs de la Colombie-Britannique a été excédentaire, ce qui a contribué aux pertes financières de l'industrie parce que le marché était saturé et que la production supplémentaire ne pouvait être vendue à quelque prix que ce soit. Le membre Coleman a conclu que le préjudice futur n'était pas imminent parce que les tendances de la production de la Californie n'indiquaient pas que l'offre avait réagi à l'augmentation des prix en 1992. Il a ajouté que rien ne prouvait que le retour à la rentabilité de l'industrie de la Colombie-Britannique en 1992 serait renversé de façon imminente en 1993.

Bicyclettes et cadres de bicyclettes en provenance de Taïwan et de la République populaire de Chine — NQ-92-002

Conclusions : Préjudice (le 11 décembre 1992)

Membres du Tribunal : Trudeau (membre président), Coates, Hallissey

• Les parties plaignantes, Groupe Procycle Inc., Les Industries Raleigh du Canada Limitée et Victoria Precision Inc., représentaient environ 90 p. 100 de la production nationale de bicyclettes. Les parties plaignantes ont soutenu avoir subi un préjudice sensible qui s'était manifesté sous la forme de pertes de part du marché,

rentables en dépit d'une forte concurrence, et rien ne laisse croire que la situation soit sur le point de changer. Par conséquent, le Tribunal a conclu que les importations futures des roulements à une seule rangée de rouleaux coniques en provenance du Japon n'étaient pas susceptibles de causer un préjudice à CTL.

Laitue (pomme) Iceberg fraîche, en provenance des États-Unis, pour utilisation ou consommation dans la province de la Colombie-Britannique — NQ-92-001

Conclusions : Préjudice
(le 30 novembre 1992)

(dissidence du membre Coleman)

Membres du Tribunal : Fraleigh (membre
président), Coleman, Blouin

- Le marché de la Colombie-Britannique pour la laitue (pomme) Iceberg fraîche totalise près de 5 millions de dollars. La partie plaignante était la B.C. Vegetable Marketing Commission (la Commission). L'industrie comprend 21 producteurs qui interviennent pour plus de 95 p. 100 de la production de la Colombie-Britannique et vendent leurs produits par l'entremise de 2 agences agréées par la Commission. Cette dernière soutenait que le dumping avait causé un préjudice sensible qui s'était manifesté sous la forme d'une érosion des prix, d'une perte de ventes, d'une réduction de la part du marché, d'une réduction des plantations de laitue pomme Iceberg et d'une diminution du nombre de producteurs de laitue pomme Iceberg en Colombie-Britannique.

- La majorité des membres du Tribunal était convaincue que l'industrie de la Colombie-Britannique constituait un marché régional au sens de l'article 4 du Code antidumping du GATT et qu'il y avait concentration des importations sur le marché régional d'après le critère de densité, qui était confirmé par le critère de distribution.

remarquer que les ventes dans ce secteur ont diminué dans une plus grande mesure que les ventes du secteur de pièces d'automobiles, qui est beaucoup plus vaste. Il en est résulté une diminution importante et proportionnelle des ventes de CTL et d'autres fournisseurs concurrents.

- Les éléments de preuve ont montré que les prix pratiqués par CTL en Amérique du Nord envers les multinationales et les secteurs de pièces d'automobiles et de pièces autres que des pièces d'automobiles du marché OEM étaient négociés par les sociétés mères aux États-Unis. Compte tenu de ce qui précède, le Tribunal ne pouvait attribuer la compression des prix des marchandises vendues par CTL ainsi que la réduction des revenus tirés des ventes et les pertes en découlant subies par CTL dans ce secteur du marché OEM au dumping de roulements en provenance du Japon.

- Le Tribunal a constaté que, sur le marché secondaire, la consommation annuelle des roulements à une seule rangée de rouleaux coniques n'avait pas diminué de façon aussi marquée que sur le marché OEM. En outre, les prix moyens sur ce marché étaient supérieurs à ceux des marchandises vendues aux constructeurs OEM. Les prix se sont maintenus, et ils étaient même à la hausse. De plus, les ventes de CTL, tant de produits fabriqués au pays que de produits importés, sont demeurées très rentables. Par conséquent, le Tribunal en est venu à la conclusion que les éléments de preuve fournis ne confirmaient pas les affirmations de CTL voulant que le dumping ait entraîné pour elle des pertes de clients et une compression des prix sur ce secteur du marché.

- Le Tribunal est arrivé à la conclusion que, étant donné que le marché OEM est, dans une grande mesure, à l'abri de la concurrence étrangère, il était peu probable que les importations en provenance du Japon accaparent une part importante de ce marché à l'avenir. En outre, les ventes de CTL sur le marché secondaire sont restées

• Pour ce qui est de l'avenir, le Tribunal n'était pas convaincu qu'en l'absence de mesures antidumping, National puisse augmenter sa part du marché et ainsi réaliser assez de ventes pour voir augmenter l'apport de ce produit à la rentabilité globale de l'entreprise et en faire un élément viable de l'ensemble des affaires. Le Tribunal a conclu que le dumping de tapis de gazon artificiel en question importé des États-Unis était susceptible de causer un préjudice sensible à la production au Canada de marchandises similaires.

Roulements à une seule rangée de rouleaux coniques en provenance du Japon — NQ-91-007

Conclusions : Aucun préjudice (le 9 juillet 1992)

Membres du Tribunal : Hines (membre président), Coates, Hallissey

• Canadian Timken, Limited (CTL) est le seul producteur au Canada des roulements à une seule rangée de rouleaux coniques, dont la valeur marchande totale, en 1991, a été évaluée à un montant considérablement inférieur à 50 millions de dollars.

• À l'appui de conclusions de préjudice, CTL a fait valoir que les importations sous-évaluées du Japon l'avaient forcée à réduire ses prix de catalogue et à restreindre ses hausses de prix pour toute la gamme de roulements qu'elle offre. CTL a affirmé que, par suite de la pression constante exercée sur les prix, elle avait subi un préjudice sensible qui s'est traduit par des pertes au niveau des ventes, une réduction de sa part du marché, une compression des prix, une réduction de l'emploi et une sous-utilisation de la capacité de production.

• Pour réfuter les allégations de CTL, les avocats des exportateurs et des importateurs ont déclaré que le préjudice subi par l'industrie avait été causé par des

• Le marché des roulements à une seule rangée de rouleaux coniques n'a cessé de se rétrécir entre 1989 et 1991. Les ventes, par CTL, de produits fabriqués au pays et de ses importations, ainsi que de produits importés en provenance du Japon et d'autres pays, ont diminué de concert avec le ralentissement du marché pendant la période visée par l'enquête. La part du marché détenue par les principaux fournisseurs est demeurée plus ou moins la même.

• Le Tribunal a examiné les répercussions du dumping sur les deux marchés où les des constructeurs de matériel (marché OEM) et le marché secondaire.

• Le marché OEM comprend à la fois le secteur de pièces d'automobiles et celui de pièces autres que des pièces d'automobiles. Le Tribunal a constaté que CTL a écoulé une partie importante de sa production nationale sur le secteur de pièces d'automobiles, qui est dominé par General Motors, Ford et Chrysler (les trois Grands). Cependant, le Tribunal a en outre constaté que les ventes de roulements japonais aux trois Grands ont été négligeables.

• Le secteur des pièces autres que des pièces d'automobiles comprend les constructeurs de pièces d'équipement de construction et de pièces d'équipement industriel. Ce secteur accapare une part infime du marché OEM et s'est toujours approvisionné auprès de fournisseurs japonais. Toutefois, le Tribunal a fait

net annuel d'environ 32 millions de dollars à une perte nette de près de 19 millions de dollars.

- Les importateurs et les représentants de quelques producteurs des États-Unis ont plaidé que des facteurs autres que le dumping avaient causé le préjudice subi par les producteurs canadiens. Ils ont cité la présente récession, la hausse du dollar canadien, l'abaissement des droits tarifaires aux termes de l'ALÉ, les importations des membres de l'industrie, la concurrence dans les prix à l'intérieur de l'industrie, et certaines pratiques de commercialisation de l'industrie qui avaient forcé les distributeurs canadiens à s'approvisionner en tapis aux États-Unis.

- Le Tribunal, en se penchant sur l'effet de ces facteurs, a évalué les tendances d'un certain nombre d'indicateurs économiques pour l'ensemble du marché et ses principaux secteurs. Le Tribunal a constaté que les tendances des différents secteurs du marché étaient à peu près les mêmes que celles du marché dans son ensemble. Dans un marché en repli, le tapis américain produit sur machine à toupfeter avait vu sa part du marché augmenter aux dépens de la production nationale. Les prix des tapis étaient confirmés, et l'industrie a subi une sous-utilisation considérable de sa capacité, ainsi que des réductions d'emploi importantes. À cause de ces facteurs, l'industrie a subi des pertes financières croissantes en 1990 et 1991.

- Le Tribunal était convaincu que, n'eût été du dumping, le tapis produit sur machine à toupfeter au États-Unis n'aurait pas pénétré le marché national comme il l'a fait. Le Tribunal a reconnu que, quoique l'abaissement tarifaire et la fermeture du dollar canadien aient renforcé la compétitivité des tapis américains et réduit le temps dont disposait l'industrie pour s'adapter à un environnement commercial s'adaptant par le libre-échange, les importations sous-évaluées, en faisant baisser les ventes des producteurs, avaient empêché l'industrie de financer les

investissements d'usines et de techniques nécessaires pour accroître son efficacité.

Tapis de gazon artificiel

- Le Tribunal a conclu que l'importante augmentation des importations américaines de tapis résidentiel sous-évalué produit sur machine à toupfeter, ainsi que de tapis commercial sous-évalué produit sur machine à toupfeter (sous réserve de quelques exclusions limitées), avait porté un préjudice sensible à la production au Canada de marchandise similaires.
- Pour ce qui est de l'avenir, le Tribunal ne prévoyait aucun allègement des fortes pressions concurrentielles, et, en conséquence, a conclu que le dumping du tapis produit sur machine à toupfeter en provenance des États-Unis était susceptible de continuer de causer un préjudice sensible à la production au Canada de marchandise similaires.
- Le Tribunal a constaté l'existence d'une importante augmentation de la part du marché des importations, ainsi que la compression des prix sur le marché du tapis de gazon artificiel pendant la période de 1990-1991. L'augmentation de la part du marché des importations était responsable, dans une grande mesure, de l'importante réduction, pendant cette période, des volumes de vente et de la part du marché de National, un producteur de tapis de gazon artificiel. Les volumes de ventes étant beaucoup plus faibles, l'apport de ces ventes à la rentabilité globale de l'entreprise a diminué considérablement en 1991 par rapport à 1990. Le Tribunal était convaincu que le dumping était une cause de l'importante augmentation des importations ainsi que de l'importante pression sur les prix constatées en 1990 et 1991. Il a conclu que le dumping du tapis de gazon artificiel produit sur machine à toupfeter avait causé et causait un préjudice sensible à la production au Canada de marchandise similaires.

d'indiquer au lecteur les marchandises principales qui font l'objet des décisions. Les conclusions rendues par le Tribunal au cours de l'exercice 1992-1993 sont énumérées en détail dans l'annexe C (tableau C-1).

Tapis produit sur machine à touffeter en provenance des États-Unis d'Amérique — NQ-91-006

Conclusions : Préjudice (le 21 avril 1992)

Membres du Tribunal : Coleman (membre président), Blouin, Coates

- En 1991, environ 72 millions de mètres carrés de tapis produit sur machine à touffeter, d'une valeur marchande d'environ 700 millions de dollars, ont été vendus sur le marché canadien.

- L'Institut canadien du tapis, producteurs de tapis produit sur machine à touffeter, et National Carpet, une division de NCM Carpet Mills Inc. (National), producteur de tapis de gazon artificiel, étaient les deux parties plaignantes.

- Le Tribunal a constaté qu'il existait trois sous-catégories de marchandises similaires : le tapis résidentiel, le tapis commercial et le tapis de gazon artificiel. En conséquence, il a examiné les effets du dumping sur la production de chacune des trois sous-catégories de marchandises.

Tapis résidentiel et commercial

- Les parties plaignantes ont allégué que la part du marché des importations de tapis produit sur machine à touffeter en provenance des États-Unis avait augmenté de 33 points de pourcentage au cours des trois dernières années. En conséquence, la part du marché, la production, l'emploi et le taux d'utilisation de la capacité de production de l'industrie se sont effondrés. De même, les résultats financiers de l'industrie se sont détériorés considérablement, passant d'un bénéfice

Enquêtes menées au cours du dernier exercice

Le Tribunal doit rendre ses conclusions dans les 120 jours qui suivent la date de la «décision provisoire» rendue par Revenu Canada. Le Tribunal dispose d'une période supplémentaire de 15 jours pour présenter un exposé des motifs à l'appui de ses conclusions (article 43 de la LMSI). Revenu Canada impose des droits sur les importations sous-évaluées ou subventionnées qui font l'objet de conclusions de préjudice sensible rendues par le Tribunal.

Pendant l'exercice 1992-1993, le Tribunal a rendu huit décisions selon les dispositions du paragraphe 42(1) de la LMSI.

TABLEAU 3.1		
DÉCISIONS RELATIVES AUX ENQUÊTES ANTIDUMPING		
Nombre de causes	Préjudice	Aucun préjudice
8	4	4

Les faits saillants de chacune des huit décisions sont donnés ci-après. Dans six des huit causes, les membres se sont rendus à l'usine afin d'examiner eux-mêmes les procédés de fabrication au Canada de même que les installations. Des estimations de la valeur sur le marché canadien des marchandises en question ont été fournies dans sept des huit causes, afin d'indiquer au lecteur l'importance sur le plan économique de chacune d'entre elles. Dans la huitième cause, il était impossible de donner des estimations sans compromettre le caractère confidentiel des données fournies par les participants.

Les sommaires des causes ont été préparés à des fins d'information seulement. Leur but est de renseigner le lecteur sur le travail du Tribunal et ils n'ont pas de statut légal. Les titres des causes ont été abrégés afin

CHAPITRE III

ENQUÊTES ET RÉEXAMENS CONCERNANT LE PRÉJUDICE CAUSÉ PAR LE DUMPING ET LE SUBVENTIONNEMENT

Aux termes de la LMSI, les producteurs canadiens peuvent avoir recours à des mesures pour contre certaines formes de concurrence injuste et préjudiciable soutenue par certaines marchandises exportées au Canada, soit :

1) l'exportation au Canada de marchandises à des prix inférieurs aux prix de vente sur le marché national ou à des prix inférieurs au coût de production, ce que l'on appelle le «dumping», ou

2) l'exportation au Canada de marchandises qui ont été produites grâce à des subventions gouvernementales ou à d'autres formes d'aide, ce que l'on appelle le «subventionnement».

Au Canada, les décisions de dumping et de subventionnement relèvent de Revenu Canada alors que la fonction de déterminer si ce dumping ou ce subventionnement a causé, cause ou est susceptible de causer un «préjudice sensible» relève du Tribunal. Conformément aux règles de commerce international du GATT, la LMSI permet le prêtèvement de droits antidumping ou de droits compensateurs sur les marchandises sous-évaluées ou subventionnées uniquement si le Tribunal décide que ces pratiques causent ou menacent de causer un préjudice sensible à la production au Canada de marchandises similaires ou retardent la mise en production au Canada de marchandises similaires.

Le processus débute lorsqu'un producteur ou une association de producteurs canadiens demandent redressement du préjudice subi en déposant une plainte auprès du sous-ministre du Revenu national pour les douanes et l'accise (le Sous-ministre). La participation du Tribunal commence habituellement à l'étape où le Sous-ministre rend une «décision provisoire» de dumping ou de subventionnement.

Lorsqu'il mène des enquêtes et rend ses décisions, le Tribunal essaie de s'assurer que toutes les parties intéressées, soient au courant de l'enquête. Il fait donc publier un avis dans la *Gazette du Canada* et envoie cet avis à toutes les parties intéressées connues. Il demande également des renseignements aux parties intéressées, reçoit des observations, visite des usines et tient des audiences publiques. Les participants à ces audiences peuvent défendre leurs propres causes ou se faire représenter par un conseiller juridique ou un avocat.

Les Règles de procédure du Tribunal renferment une liste des facteurs et des critères à examiner pour déterminer ce qui constitue un préjudice sensible. Ces facteurs comprennent, entre autres, les effets qu'ont les importations sous-évaluées ou subventionnées sur les prix et sur des éléments comme la production, les ventes, les parts du marché, les bénéfices, l'emploi et l'utilisation de la capacité de production.

Lors de l'audience publique, l'industrie qui a déposé la plainte essaie de convaincre le Tribunal qu'elle a subi un préjudice sensible en raison du dumping ou du subventionnement des marchandises faisant l'objet de l'enquête. La cause des parties plaignantes est habituellement contestée par les importateurs et parfois par les exportateurs qui présentent des éléments de preuve contraires. Après contre-interrogatoire, chaque partie a l'occasion de répondre aux arguments de l'autre partie et de résumer ses propres arguments.

TABLEAU 2.3	
RÉPARTITION DU PERSONNEL	
PAR CATÉGORIE ET	
GROUPE PROFESSIONNEL	
Membres et	personnel
1992-1993	
Membres	
Membres à plein temps	9
Membre vacataire	1
Gestion	
Groupe de direction	9
Catégorie scientifique et professionnelle	
Economie, sociologie et statistiques	2
Droit	7
Bibliothéconomie	1
Administration et service extérieur	
Services administratifs	10
Commerce	20
Gestion des systèmes d'ordinateurs	3
Gestion des finances	1
Services d'information	4
Gestion du personnel	2
Catégorie technique	
Techniciens divers	1
Soutien des sciences sociales	8
Soutien administratif	
Commis aux écritures et aux règlements	12
Secrétariat, sténographie et dactylographie	9
Total	99*
* Ne comprend pas les ressources temporaires obtenues pour les enquêtes spéciales. Au 31 mars 1993, l'effectif du Tribunal comptait cinq personnes de plus dans le cadre de l'enquête sur la répartition des contingents d'importation.	

organisés afin de permettre au personnel de se familiariser avec les démarches innovatrices dans le domaine de la bureautique. Le Tribunal a également conclu un certain nombre de protocoles de détachement avec des organismes et des ministères fédéraux. Ces protocoles permettent aux employés d'élargir leur champ d'expérience et leurs connaissances spécialisées dans des disciplines qui profiteront tant au personnel qu'au Tribunal.

Un comité de travail composé d'employés du Tribunal a également mis sur pied un programme d'Attestations de mérite des employés. Les premiers lauréats des attestations de mérite seront annoncés au cours de l'exercice 1993-1994.

Le Tribunal a également participé au travail préparatoire qui a conduit à la mise en oeuvre de différents changements dans le secteur des ressources humaines par suite de l'adoption du projet de loi C-26 (*Loi sur la réforme de la fonction publique*).

Le Tribunal a joué un rôle actif dans les activités relatives à l'adoption du Plan général d'évaluation des emplois et à la conversion des postes de divers groupes professionnels au nouveau groupe GF.

Divers

Les membres et le personnel ont démontré leur engagement social en donnant généreusement à la campagne Centralide/Partenairesanté, ce qui a permis au Tribunal de dépasser une fois de plus son objectif. La levée de fonds annuelle que le Tribunal organise à Noël pour venir en aide à Gite Ami et aux Bergers de l'Espoir a également été couronnée de succès grâce à la générosité des membres et du personnel.

Le Tribunal s'installera dans de nouveaux locaux en septembre 1993. En vue du déménagement, il a révisé la conception de ses salles d'audience et procédé à un certain nombre d'améliorations qui les rendront plus

fonctionnelles. Le Tribunal sera heureux d'accueillir le public à la Tour Laurier de l'immeuble Standard Life Centre, située au 333, avenue Laurier ouest, à Ottawa (Ontario).

Ressources financières et humaines

Les ressources financières et humaines du Tribunal ont été établies à partir d'une moyenne de la charge de travail composée d'appels, d'enquêtes sur le dumping et le subventionnement, de réexamens et de mesures de sauvegarde qui sont la suite des activités des prédécesseurs du Tribunal. Si des changements surviennent, comme un travail d'envergure à la suite d'une saisine transmise par le gouvernement, le Tribunal peut avoir à soumettre une demande pour des ressources supplémentaires pendant une période déterminée.

Le tableau 2.2 fournit des données budgétaires tirées du Budget des dépenses du Tribunal.

DONNÉES BUDGÉTAIRES

1992-1993		1991-1992	
Budget	des dépenses	Budget	des dépenses
(000)	(000)	(000)	(000)
Personnel			
Traitements et salaires			
5 825	5 646		
Contributions aux régimes d'avantages sociaux des employés			
932	875		
6 757	6 521		
Biens et services			
1 313	1 377		
Total des dépenses d'exploitation			
8 070	7 898		
12	135		
8 082	8 033		
Capital			
Total du programme			

Le tableau 2.3 présente la répartition du personnel par catégorie et groupe professionnel.

l'exercice 1992-1993 : la section ontarienne de l'Association du Barreau canadien, le Conseil des tribunaux administratifs canadiens, le Comité international de la Chambre de commerce du Canada, la Conférence des Nations-Unies sur le commerce et le développement (CNUCED) — la Conférence sur la transparence en matière commerciale, qui s'est tenue à Genève, le Conférence Board du Canada et l'Association des Importateurs canadiens.

Des membres et des hauts responsables se sont également adressés à des auditoires variés, parmi lesquels des conseillers économiques de la Communauté européenne, la Canada-Korea Association, l'Association des importateurs canadiens et des représentants commerciaux de pays en voie de développement.

Différents groupes et particuliers ont rendu visite au Tribunal au cours de l'exercice 1992-1993. Il s'agissait, entre autres, de représentants commerciaux de la Colombie, de la Jamaïque, de Trinidad et du Venezuela.

Le Tribunal a tenu sa retraite annuelle au mois de décembre 1992. Cette réunion a permis aux membres et au personnel de discuter de questions d'intérêt commun. Dans le cadre des activités préparatoires à cet événement, le Tribunal a effectué un sondage auprès de ses employés. Les résultats du sondage ont fait l'objet de discussions lors de la retraite, et un plan d'action officiel a été arrêté par le Tribunal pour donner suite aux suggestions et aux recommandations.

Ressources humaines

Encore une fois, au cours de l'exercice 1992-1993, le Tribunal a pris un certain nombre de mesures pour offrir au personnel des possibilités de formation et de perfectionnement. Tous les employés ont eu l'occasion de participer à au moins une séance de formation ou de perfectionnement. Des ateliers pratiques de formation ont été

pourra y affecter. Deux séances de planification ont été tenues pendant l'exercice 1992-1993. Le Tribunal tient également deux séances de planification interne par année avec ses membres et employés.

Le personnel du Tribunal participe également aux discussions inter-ministérielles ayant trait aux futures saisines et aux autres questions qui ont une incidence sur l'environnement économique, commercial et tarifaire dans lequel il exerce ses fonctions. Ces discussions permettent au Tribunal de mieux orienter ses travaux de recherche et l'aident à trouver un juste milieu entre les saisines et son travail habituel. De plus, elles aident le Tribunal à s'assurer que le mandat et les ressources affectées à un projet lui permettent d'effectuer son travail de façon indépendante et efficace.

Règles de procédure du Tribunal

Le décret C.P. 1991-1446 du 13 août 1991 et enregistré le 14 août 1991 sous le numéro DORS/91-499 a abrogé les *Règles du Tribunal canadien des importations* qui étaient utilisées par le Tribunal depuis sa création, et a mis en application les *Règles du Tribunal canadien du commerce extérieur*.

Séminaires, allocutions et visites

Le Tribunal reconnaît qu'il a un rôle à jouer afin de démystifier son travail quasi-judiciaire.

Pour ce faire, les membres et les cadres supérieurs du Tribunal assistent à des colloques d'affaires et à des conférences d'associations industrielles et, sur invitation, y participent à titre de conférencier ou d'expert. Le président du Tribunal a pris la parole devant les groupes suivants au cours de

TABLEAU 2.1

FONCTIONS JUDICIAIRES ET CONSULTATIVES DU TRIBUNAL

FONCTIONS CONSULTATIVES

- ENQUÊTES SUR LES MESURES DE SAUVEGARDE CONTRE LES IMPORTATIONS (ARTICLE XIX DU GATT, ALE, TPG OU CARIBCAN)
- ENQUÊTES GÉNÉRALES SUR DES QUESTIONS ÉCONOMIQUES, COMMERCIALES ET TARIFAIRES, À LA DEMANDE DU GOUVERNEMENT OU DU MINISTRE DES FINANCES

- Questions ayant trait aux intérêts économiques et commerciaux du Canada
- Questions tarifaires, y compris celles liées aux droits et aux obligations du Canada à l'échelle internationale

FONCTIONS JUDICIAIRES

- ENQUÊTES CONCERNANT LE PRÉJUDICE CAUSÉ PAR LE DUMPING ET LE SUBVENTIONNEMENT

- Préjudice sensible découlant du dumping ou du subventionnement de marchandises exportées au Canada
- Réexamens des conclusions de préjudice sensible
- Renvois pour déterminer s'il y a des indications suffisantes de préjudice sensible et décisions sur l'identité de l'importateur
- Avis sur les questions de l'intérêt public découlant des enquêtes de préjudice concernant le dumping ou le subventionnement
- APPELS DES DÉCISIONS DE REVENU CANADA

- Classement tarifaire et valeur en douane selon la Loi sur les douanes
- Cotisation ou détermination relative à la TVF ou à la taxe d'accise
- Classement et établissement de la valeur des marchandises sous-évaluées ou subventionnées
- Droits ou sommes payables selon la Loi sur le droit à l'exportation de produits de bois-d'œuvre et la Loi sur l'administration de l'énergie

Activités de planification

L'un des objectifs généraux du Tribunal est une bonne planification. Le Tribunal veut être en mesure de mieux anticiper les changements qui se produiront dans l'environnement commercial et qui généreront des demandes et créeront des possibilités. Il s'efforce de maintenir un équilibre raisonnable entre la charge de travail et les ressources disponibles et s'assure qu'il a les ressources nécessaires avant d'accepter des projets d'envergure.

Pour atteindre cet objectif, le Tribunal doit jouer un rôle actif dans la planification de futures saisines du gouvernement sur les questions commerciales et tarifaires sans compromettre toutefois son indépendance. Le Tribunal a organisé des séances semi-annuelles de planification avec les hauts fonctionnaires du gouvernement afin de discuter de la nature, du calendrier et de la portée d'enquêtes commerciales ou tarifaires que le Tribunal se verra peut-être assigner au cours de la prochaine année et du temps et des ressources que le Tribunal

Le Tribunal est un tribunal administratif qui fait partie des mécanismes de recours commerciaux du Canada.

Le Tribunal est un organisme quasi-judiciaire et indépendant qui assume ses responsabilités législatives de façon impartiale et autonome. Même s'il relève du Parlement par l'entremise du ministre des Finances, il ne fait partie d'aucun ministère ni organisme gouvernemental.

Membres

Les principaux documents législatifs régissant les travaux du Tribunal sont la Loi sur le TCCB et son Règlement d'application, les *Règles du Tribunal canadien du commerce extérieur* (les Règles de procédure du Tribunal), la LMSI, la *Loi sur les douanes* et la *Loi sur la taxe d'accise*. Les attributions que ces différentes lois confèrent au Tribunal sont décrites dans l'annexe A.

Organisation

Le Tribunal compte neuf membres à plein temps et un membre vacataire, dont un président et deux vice-présidents, nommés par le gouvernement en conseil pour un mandat d'au plus cinq ans. Cinq membres supplémentaires, au plus, peuvent être nommés temporairement. Le président est le premier dirigeant responsable de l'affectation des membres et de la gestion des affaires internes du Tribunal. Les membres viennent de diverses régions et leurs antécédents scolaires et professionnels sont des plus variés.

Les membres, présentement au nombre de 10, peuvent compter sur l'appui d'un effectif de 89 employés permanents. Ses principaux agents sont le directeur exécutif, Recherche, chargé de l'analyse économique

et financière des entreprises et des industries ainsi que de la recherche des faits exigée dans le cadre des enquêtes du Tribunal; le secrétaire, responsable des services administratifs, des relations avec le public, les ministères et autres organismes du gouvernement et d'autres administrations ainsi que des fonctions de greffier du Tribunal; et l'avocat général, responsable des services juridiques du Tribunal.

Fonctions

Le Tribunal joue un rôle à la fois judiciaire et consultatif, et il exécute divers programmes dans le cadre de chacun de ces volets. Le tableau 2.1 illustre les fonctions judiciaires et consultatives du Tribunal.

Mode de fonctionnement

Le Tribunal tient des audiences publiques dans le cadre de presque tous ses programmes. Celles-ci ont habituellement lieu à Ottawa (Ontario), dans les locaux du Tribunal, mais, le cas échéant, elles peuvent se tenir n'importe où au Canada. Le Tribunal applique des règles et une procédure semblables à celles d'une cour de justice, mais d'une façon plus souple. La Loi sur le TCCB prévoit que les audiences, tenues par au moins trois membres, doivent se dérouler de la manière «la plus efficace, la plus équitable et la plus expéditive» possible. Le Tribunal peut citer des témoins à comparaître et exiger des parties qu'elles produisent des documents même lorsque ces derniers sont confidentiels pour des raisons commerciales. La Loi sur le TCCB renferme des dispositions qui permettent de contrôler étroitement l'accès aux documents confidentiels.

Les décisions du Tribunal sont définitives, mais elles peuvent, selon le cas, être réexaminées ou être portées en appel devant la Cour suprême du Canada, ou devant un groupe spécial binationnel formé en vertu de l'ALE lorsqu'il s'agit d'une décision touchant les intérêts des États-Unis. Les gouvernements peuvent interjeter appel des décisions auprès d'un groupe de règlement des différends commerciaux du GATT.

TABLEAU 1.1

CHARGE DE TRAVAIL DU TRIBUNAL POUR L'EXERCICE 1992-1993

	Causes du dernier exercice qui ont été reportées	Causes reçues ou entrées pendant l'exercice	Total	Décisions rendues/rapports publics	Causes retirées	Causes en instance (au 31 mars 1993)	Audiences tenues (en jours)	Parties intéressées	Témoins	Visites d'usine
ACTIVITÉS AUX TERMES DE LA LMSI										
Enquêtes de préjudice	2	9	11	8	-	3	6 (49)	121	197	10
Réexamens de préjudice	3	3	6	6	-	-	6 (7)	23	26	4
Avis d'expiration	1	2	3	2	-	1	S.O.	S.O.	S.O.	S.O.
Renvois	-	6	6	4	-	2	S.O.	S.O.	S.O.	S.O.
Question de l'intérêt public	-	1	1	1	-	-	S.O.	28	S.O.	S.O.
Demande de réexamen de conclusions ou d'une ordonnance	-	1	1	-	-	1	S.O.	S.O.	S.O.	S.O.
Décision sur renvoi	-	1	1	1	-	-	S.O.	S.O.	S.O.	S.O.
APPELS										
Loi sur les douanes	118	172	290	38	73	179	47 (45)	48	62	S.O.
Loi sur la taxe d'accise	508	196	704	84 ¹	69	551	126 ¹ (112)	130	115	S.O.
LMSI	11	19	30	7	8	15	9 (9)	9	26	S.O.
Loi sur le droit à l'exportation de produits de bois-d'œuvre	-	1	1	-	-	1	1 (1)	1	2	S.O.
Total	637	388	1 025	129	150	746	183 (167)	188	205	S.O.
ENQUÊTES SUR LES QUESTIONS ÉCONOMIQUES, COMMERCIALES ET TARIFAIRES, ET LES MESURES DE SAUVEGARDE										
Enquête sur des questions de nature économique, commerciale et tarifaire	1	1	2	1	-	1	3 (12)	121	67	15
Enquête sur les mesures de sauvegarde globales	-	1	1	1	-	-	S.O.	S.O.	S.O.	S.O.

1. Trois de ces appels étaient également en application de la Loi sur le droit à l'exportation de produits de bois-d'œuvre.

Examens par des groupes spéciaux binationaux

- En 1991, la décision rendue par le Tribunal dans la cause de la bière originale ou exportée des Etats-Unis (NQ-91-002) a fait l'objet d'un examen par un groupe spécial binational formé en vertu du chapitre 19 de l'ALE. Le Tribunal, comme suite à un renvoi du groupe spécial, a confirmé sa décision initiale.
- Le 8 février 1993, le groupe spécial a rendu une deuxième décision, confirmant ainsi la décision sur renvoi.

Membres et personnel

- Mme Lise Bergeron a été nommée membre vacataire du Tribunal le 14 décembre 1992.
- Le 31 mars 1993, le Tribunal se composait de 10 membres et avait un effectif de 89 employés.

- Une fois que le Tribunal aura statué sur l'arrière des appels concernant la TVF, y compris ceux ayant trait aux remboursements de la TVF demandés en raison de l'entrée en vigueur de la TPS, sa charge de travail relative aux appels se limitera principalement aux décisions de *Revenue Canada* concernant la *Loi sur les douanes* et la *LMST*. Le nombre de ce genre d'appels a connu une forte augmentation.

- Le groupe de travail spécial mis sur pied pour traiter de l'arrêt des appels touchant la TVF a répondu aux attentes du Tribunal. Le nombre de décisions rendues a augmenté pour passer de 88 au cours du dernier exercice à 129 pour l'exercice 1992-1993. Le nombre de causes entendues a également augmenté considérablement, car il est passé de 96 à 183.

Saisines sur les questions commerciales et tarifaires

- Conformément à la Loi sur le TCCB, le gouvernement en conseil ou le ministre des Finances peut demander au Tribunal d'enquêter et de faire rapport sur tout dossier relatif aux intérêts commerciaux et tarifaires du Canada. Au cours de la dernière année, le Tribunal a effectué deux enquêtes d'envergure.

a) Enquête sur la répartition des contingents d'importation

- En août 1991, le gouvernement a demandé au Tribunal de mener une enquête afin de formuler des recommandations sur : 1) la méthode optimum de répartition des contingents d'importation des produits agricoles et laitiers soumis à la gestion des approvisionnements; et 2) les principes qui devraient régir la répartition des contingents d'importation en général.

- La saisine du gouvernement correspondait aux recommandations du Groupe de travail

national sur la volaille et du Groupe de travail sur la politique laitière nationale selon lesquelles les méthodes actuelles de répartition des contingents d'importation de produits laitiers et de la volaille devaient être révisées.

- Le Tribunal a déposé son rapport le 13 octobre 1992. Il y recommandait l'adoption de solutions de rechange aux méthodes actuelles de répartition des contingents d'importation dans le cas de nombreux produits agricoles faisant présentement l'objet de contrôles d'importations. Il y faisait également des recommandations sur les principes qui devraient régir la répartition de ces contingents.

b) Enquête sur la compétitivité des industries canadiennes de l'élevage des bovins et de la transformation du boeuf

- En novembre 1992, le gouvernement a demandé au Tribunal de mener une enquête sur la compétitivité des industries canadiennes de l'élevage des bovins et de la transformation du boeuf sur le marché nord-américain et les marchés internationaux.

- Le Tribunal, assisté de son personnel et d'experts-conseils, a mis sur pied un vaste programme de recherches. Il a tenu des audiences publiques en janvier et mars 1993 dans le but de recueillir l'avis des parties intéressées sur les enjeux de la compétitivité auxquels font face les industries canadiennes de l'élevage des bovins et de la transformation du boeuf et sur le déroulement de l'enquête. D'autres audiences sont prévues pour avril et septembre 1993, à Ottawa (Ontario). L'audience de septembre permettra aux parties intéressées de faire des observations sur les travaux de recherche du personnel du Tribunal et de ses experts-conseils.

- Le Tribunal doit présenter son rapport au gouvernement d'ici la fin de 1993.

CHAPITRE I

FAITS SAILLANTS DU TRIBUNAL 1992-1993

Enquêtes concernant le préjudice causé par le dumping et le subventionnement

a) Nouvelles causes

- Le Tribunal canadien du commerce extérieur (le Tribunal) a rendu huit conclusions à l'issue d'enquêtes permettant de déterminer si des marchandises, qui de l'avis du ministre du Revenu national (Revenu Canada) étaient sous-évaluées ou subventionnées, causaient un préjudice sensible à la production au Canada de marchandises similaires.
- Dans quatre des causes, le Tribunal a conclu au préjudice. Le résultat de conclusions de préjudice est l'imposition immédiate de droits antidumping qui permettent d'éliminer la marge de dumping constatée par Revenu Canada.
- Dans les quatre autres causes, le Tribunal a conclu qu'il n'y avait aucun préjudice. Lorsque le Tribunal rend de telles conclusions, l'affaire est close immédiatement et Revenu Canada rembourse les droits provisoires perçus des importateurs.
- b) Réexamens des conclusions en vigueur
 - Le Tribunal a rendu six décisions concernant des réexamens de conclusions traitant de droits antidumping ou de droits compensateurs. La LMSI prévoit que des conclusions traitant de droits antidumping ou de droits compensateurs sont annulées cinq ans après la date à laquelle elles ont

c) Question de l'intérêt public

- Dans les trois autres causes, le Tribunal a annulé les conclusions, ce qui a mis fin à la perception de droits antidumping ou de droits compensateurs sur les importations en question.
- Pendant l'enquête portant sur les bicyclettes et les cadres de bicyclettes importés au Canada en provenance de Taïwan et de la République populaire de Chine (NQ-92-002), le Tribunal a reçu des exposés de parties intéressées sur la question de l'intérêt public.

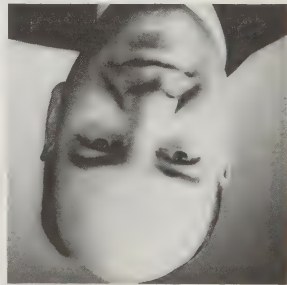
- Le Tribunal a exprimé l'avis qu'il ne serait pas dans l'intérêt public de réduire les droits antidumping imposés à leur plein montant sur les importations en provenance de Taïwan et de la République populaire de Chine. Par conséquent, aucun rapport n'a été présenté au ministre des Finances.

Appels interjetés par les contribuables à l'égard de décisions rendues par Revenu Canada en matière de douanes et d'accise

- Le Tribunal a rendu 129 décisions concernant les appels interjetés par les contribuables à l'égard de décisions de Revenu Canada en matière de douanes et d'accise. De ce nombre, 62 appels ont été admis en entier ou en partie et 67 ont été rejetés.

- Les appels concernant la TPS, qui a remplacé la TVF le 1^{er} janvier 1991, sont entendus par la Cour canadienne de l'impôt.

CADRES SUPÉRIEURS



Secrétaire :

Michel P. Granger est originaire de Hull (Québec). Il a obtenu un B.A., un B.BiBl. et une M.B.A. de l'Université d'Ottawa. Il s'est joint au Tribunal en janvier 1990 à titre de sous-secrétaire et chef de l'administration. Avant cette nomination, il a occupé divers postes de gestion au sein du De 1971 à 1983, il a travaillé comme bibliothécaire professionnel dans divers ministères fédéraux. Il a été nommé secrétaire du Tribunal le 1^{er} septembre 1992.



Directeur exécutif, Recherche :

Ronald W. Erdmann est originaire de Toronto (Ontario). Il s'est joint au Tribunal en janvier 1989 après plusieurs années de service au ministère des Ressources (EMR) et au ministère des Finances. Il a travaillé pendant 15 ans à EMR et, à son départ, il occupait le poste de directeur général de la Direction de l'analyse de la politique économique et financière. M. Erdmann a participé aux négociations énergétiques et s'est penché sur les modifications apportées de façon continue au régime canadien de la taxe sur le pétrole, et sur l'établissement de modèles et de prévisions de l'offre et de la demande d'énergie. Il a également été membre du conseil d'administration du Canadian Energy Research Institute (CERI) à Calgary et de l'Office des indemnités pétrolières. M. Erdmann a obtenu un B.Com et une M.A. en sciences économiques de la University of Toronto.



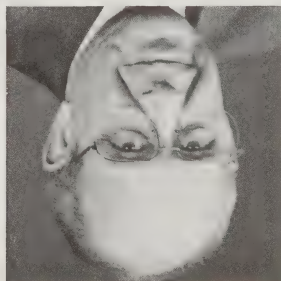
Avocat général :

Debra P. Steger est originaire de Oliver (Colombie-Britannique). Elle a obtenu une LL.M. de la University of Michigan Law School, un LL.B. de la University of Victoria et un B.A. de la University of British Columbia. Elle a exercé dans le domaine du droit commercial international et de la concurrence lorsquelle était au sein des firmes Fraser & Bectay à Ottawa et auparavant McCarthy & McCarthy à Toronto. Plus récemment, M^{me} Steger était au Bureau des négociations commerciales multilatérales (BNCM), Affaires extérieures et Commerce extérieur Canada (AECEC), et a collaboré aux négociations de l'Uruguay Round menées dans le cadre du GATT. Elle est professeure adjointe de droit à l'Université d'Ottawa. Elle a prononcé de nombreux discours et a publié plusieurs ouvrages sur la politique et le droit commercial international.

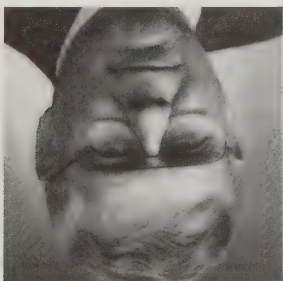
Lise Bergeron est originaire de Montréal (Québec). Elle a obtenu une M.A. en sociologie de l'Université de Montréal et a poursuivi ses études en vue de l'obtention de son doctorat. Elle est également titulaire d'une M.A. en économie agricole de la University of London en Angleterre. Auparavant, elle était professeure au département de sciences sociales du Cégep de Saint-Jérôme. De 1981 à 1983, elle a travaillé pour la Coopérative fédérée de Québec à titre de coordonnatrice de la Recherche et des Communications institutionnelles à la Division de l'industrie laitière. De 1983 à 1986, M^{me} Bergeron a été directrice de la Fédération des producteurs de porcs du Québec, organisme affilié à l'Union des producteurs agricoles du Québec. De 1986 à 1991, elle a exercé les fonctions de vice-présidente du Conseil national de commercialisation des produits agricoles (CNCPA) à Ottawa. M^{me} Bergeron a été nommée membre vacataire du Tribunal le 14 décembre 1992.



L'honorable Robert C. Coates, c.r., est originaire de Amherst (Nouvelle-Écosse). M. Coates a été député pour le comté de Cumberland-Colchester de 1957 à 1988. Il a été le président national de l'Association progressiste conservatrice du Canada de 1977 à 1981. M. Coates a été ministre de la Défense nationale de septembre 1984 à février 1985. Il a obtenu un baccalauréat de la Mount Allison University et un L.L.B. de la Dalhousie Law School. M. Coates a été nommé conseiller de la reine en 1980.



Desmond Hallissey est originaire de la ville de Québec (Québec). Il a obtenu son certificat d'ingénierie de la St. Francis Xavier University et son baccalauréat en génie civil de l'Université de Montréal. Il a travaillé dans différents bureaux d'ingénieurs et, en 1963, a mis sur pied sa propre firme d'ingénieurs-conseils qu'il a vendue en 1990. Il a été administrateur de Télésat Canada de 1984 jusqu'à ce qu'il soit nommé membre du Tribunal.



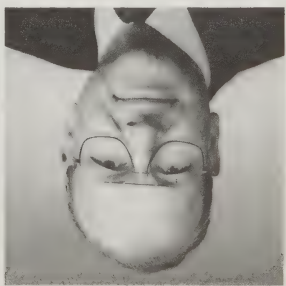
Michèle Blouin est originaire de la ville de Québec (Québec) et elle est devenue membre du Barreau du Québec en 1975, après avoir fait des études de droit à l'Université de Montréal. Elle a fait partie de l'étude Blouin, Gagnon en qualité d'associée principale et a été conseillère en commerce international auprès du Groupe de consultations sectorielles sur le commerce extérieur (GCSB) portant sur les industries artistiques et culturelles.



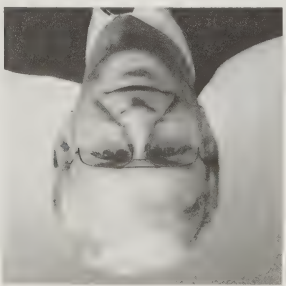
Charles A. Gracey est originaire de Woodstock (Ontario). Il est agronome professionnel, spécialisé en sciences animales et a exercé pendant 20 ans les fonctions de vice-président directeur de la Canadian Cattlemen's Association (CCA). Il a travaillé auparavant au ministère de l'Agriculture et de l'Alimentation de l'Ontario et a enseigné au Kempenville Agricultural College.



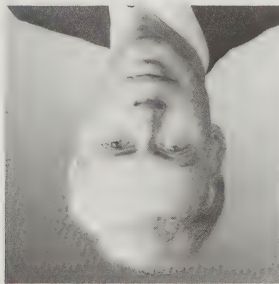
Sidney A. Fraleigh est originaire de Forest Lambton-Middlesex en 1979 et en 1984. Il a été élu député fédéral du comté de commercialisation du porc et du Conseil canadien du porc. Il a été président de la Commission ontarienne de l'élevage du porc et de la Commission ontarienne de l'élevage du porc.



W. Roy Hines est originaire de Reserve à l'île du Cap-Breton (Nouvelle-Écosse). Il a fait des études en commerce et en sciences économiques à la St. Francis Xavier University et à l'Université d'Ottawa. Fonctionnaire depuis plus de 30 ans, il a travaillé aux ministères du Revenu national et des Finances, au département d'État au Développement économique (DEDER), au ministère de l'Expansion industrielle régionale (MEIR) et au Bureau des négociations commerciales multilatérales (BNCM). Alors qu'il travaillait au ministère des Finances, il a été l'un des artisans de la LMSI.



MEMBRES DU TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR



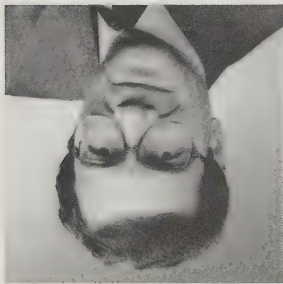
Président :

John C. Coleman est originaire de Montréal (Québec). Il a étudié l'histoire à la University of Toronto et à la University of Carleton. Il s'est joint au Tribunal après avoir exercé les fonctions de sous-ministre adjoint à la Direction des finances et du commerce international du ministère des Finances. Il a également été détaché à Washington auprès du directeur général international du Fonds monétaire international (FMI) et a fait partie à Paris de la délégation canadienne de l'Organisation de coopération et de développement économiques (OCDE).



Vice-président :

Kathleen E. Macmillan est originaire d'Ottawa (Ontario). Elle a obtenu un B.A. en sciences économiques de la Queen's University et une M.A. de la University of Alberta. Elle a publié de nombreux travaux à titre d'économiste et d'analyste des politiques au Conseil économique du Canada (CEC), à la Canada West Foundation et au C.D. Howe Institute.



Vice-président :

Arthur B. Trudeau est originaire de l'Île des Chênes et un B.Com de la University of Manitoba et une M.A. de la Carleton University. Avant de devenir fonctionnaire au gouvernement fédéral en 1971, il a occupé différents postes de gestionnaire en comptabilité et finances auprès de DuPont du Canada Limitée. Il a été secrétaire du Tribunal antidumping qui est devenu le Tribunal canadien des importations et est devenu membre par la suite du TCL.

loi susceptibles d'influer considérablement sur le rôle et la charge de travail du Tribunal étaient examinés par le Parlement. Le premier d'entre eux visait la mise en oeuvre de l'ALENA. Le second, soit le projet de loi C-93, prévoyait la fusion de la Commission de révision des marchés publics et du Tribunal en vue de créer le Tribunal du commerce extérieur et des marchés publics. Ce projet de loi a été rejeté par le Sénat le 10 juin 1993. Avec notre partenaire, la CRMP, nous avons fait beaucoup d'effort pour regrouper nos ressources et pour nous préparer à l'adoption du projet de loi C-93. Nous espérons que la fusion se concrétisera.

Avant de terminer, j'aimerais adresser quelques mots aux membres du Tribunal et à son personnel. En moins de cinq ans, nous avons créé l'un des tribunaux et des offices fédéraux les plus professionnels, les plus axés sur la prestation de services et l'un de ceux où règne le plus un esprit de collaboration. Je suis persuadé que l'assiduité au travail, l'imagination et la bonne humeur de ce groupe multidisciplinaire et talentueux permettront à ce dernier de relever avec créativité les nombreux nouveaux défis auxquels il devra faire face au cours des années à venir.

John C. Coleman



Au début de juin 1993, alors que nous étions en train de mettre la dernière main au présent rapport annuel, deux projets de

immuable qui emménageront dans le même d'autres commissions et tribunaux fédéraux bibliothèque avec un certain nombre conférence et d'audience ainsi qu'une que le Tribunal partagera des salles de 333 de la rue Laurier ouest. Il est prévu l'immeuble Standard Life Centre situé au septembre 1993, il emménagera dans l'immeuble voisin de l'édifice actuel, soit Tribunal devra quitter ses locaux. En qu'en raison de travaux de rénovation, le l'autonomie dernier, nous avons appris

son dixième membre, M^{me} Lise Bergeron. En décembre 1992, le Tribunal a accueilli

du Tribunal, qui a pris une retraite anticipée après 30 années de service à la fonction publique. Robert a été l'un des plus importants fondateurs du Tribunal. Sa très grande connaissance du commerce, son énergie débordante et son sens de l'humour particulier nous manquent considérablement. M. Michel Granger, qui a été promu de secrétaire adjoint à secrétaire le 1^{er} septembre 1992, est un digne remplaçant de Robert.

grande envergure sur des mesures de sauvegarde contre les importations.

- Les saisines commerciales et tarifaires transmises par le gouvernement ont représenté un important volet des activités du Tribunal en 1992-1993. Le 30 novembre 1992, le Tribunal a déposé son rapport sur la répartition des contingents d'importation sur lequel se penche maintenant le gouvernement. Ce rapport renferme non seulement des recommandations pour améliorer la répartition des contingents d'importation pour les produits soumis à la gestion de l'offre dans les industries laitière et avicole, mais aussi bon nombre de renseignements utiles sur le fonctionnement de ces industries aux termes du régime de la gestion de l'offre. De plus, en novembre 1992, le Tribunal a été saisi d'une enquête d'un an sur la compétitivité des industries canadiennes de l'élevage des bovins et de la transformation du bœuf sur le marché nord-américain et les marchés internationaux.

- Après plus de quatre ans d'existence, le Tribunal a entrepris de réviser ses règles de procédure. Nous voulons tenir compte des améliorations qui se sont produites récemment dans la gestion des appels et des causes relatives à la LMSI. Nous voulons également prendre de nouvelles mesures propres à activer le dépôt des exposés par les parties, à arrêter la durée des audiences publiques, et, de façon générale, à réduire les coûts pour les parties et pour le Tribunal.

Comme pour tous les autres organismes, l'année qui vient de s'écouler au Tribunal a été marquée d'un certain nombre de changements et de départs.

En août 1992, nous avons fait nos adieux à M. Robert Martin, le premier secrétaire

renvois des groupes spéciaux binationaux de décisions rendues par le Tribunal nous obligent à documenter solidement, à l'aide d'un nombre accru de données, le lien de causalité qui existe entre le dumping ou le subventionnement, d'une part, et le préjudice sensible subi par les producteurs canadiens, d'autre part.

- Dans le cadre de son travail concernant les appels, le Tribunal a tenu des audiences et rendu des décisions à l'égard d'un nombre d'appels considérablement plus élevé l'an passé. Cette augmentation traduit l'application systématique des *Règles du Tribunal canadien du commerce extérieur* de 1991 aux termes desquelles des délais sont fixés pour la présentation des mémoires et la tenue des audiences. Ces règles encouragent les parties à recourir à une audience fondée sur les dossiers ou à retirer leurs appels si elles n'ont pas l'intention de les mener à terme. En dépit du nombre accru de décisions rendues, le nombre des nouveaux appels interjetés devant le Tribunal a été encore plus élevé, en particulier les appels ayant trait au classement tarifaire et aux décisions du ministère du Revenu national en application de la LMSI.

- En juillet 1992, le Tribunal a été saisi pour la première fois d'une demande officielle d'enquête sur des mesures de sauvegarde contre les importations formulée par une industrie canadienne en application de l'article 22 de la Loi sur le TCE. La demande a été présentée par Algoma Steel Inc. à l'égard de l'importation de profils d'acier à larges ailes. Le Tribunal a accepté le dossier complet de la plainte déposée par Algoma Steel Inc., mais il a conclu que celle-ci ne lui fournissait pas suffisamment de motifs pour justifier la tenue d'une enquête de

MESSAGE DU PRÉSIDENT

Le présent rapport annuel est bien le reflet de l'année chargée et productive qu'a de nouveau connue le Tribunal canadien du commerce extérieur.

Notre charge de travail composée d'enquêtes sur les droits antidumping et compensateurs, d'appels à l'égard de décisions du ministère du Revenu national en matière de douanes et d'accise, de même que d'enquêtes commerciales menées à la demande du gouvernement a dépassé celle des années antérieures. En raison de la compression des dépenses publiques, nous avons effectué notre travail avec moins de ressources. Or, nous avons réalisé cet exploit sans compromettre la qualité ni le respect des délais, mais nos membres et nos employés ont été soumis à des pressions beaucoup plus fortes.

Nous avons pu relever ces défis parce que nous avons bien cerné notre mission et renforcé notre culture organisationnelle. Nous avons pris le ferme engagement de servir le grand public avec équité, rapidité et professionnalisme. Le sens d'appartenance à la collectivité des membres et des employés est, à l'instar de leur fierté, très fort. Nous savons qu'une saine gestion interne et des relations de travail harmonieuses nous permettent d'atteindre les objectifs en matière de service que s'est fixés le Tribunal.

Voici, à mon avis, quelques-uns des faits saillants des activités du Tribunal l'an dernier :

- Dans le cadre de son travail relatif aux droits antidumping et compensateurs, en application de la LMSI, le Tribunal a traité le plus grand nombre de nouveaux

dossiers - comparativement à des réexamens de conclusions antérieures - depuis sa création à la fin de 1988. Dans la moitié de ces causes, le Tribunal a rendu des conclusions de préjudice sensible et ratifié l'imposition de droits antidumping tandis que, dans l'autre moitié, les dossiers ont été fermés et les droits antidumping provisoires, remboursés.

- Pour le volet de son travail portant sur la LMSI, le Tribunal a élaboré de nouvelles procédures en matière de gestion des dossiers visant à abréger la durée de ses audiences publiques et à les rendre plus efficaces. Ces procédures prévoient la tenue, au début des examens, de conférences préparatoires à l'audience au cours desquelles les questions de fond sont précises, les questions de procédure sont traitées et un calendrier des audiences est établi. Elles permettent également aux membres saisis de l'affaire de jouer un rôle plus actif dans la direction des audiences.

- De plus, dans le cadre du travail relatif à la LMSI, les employés du Tribunal ont augmenté leurs efforts de recherche, principalement par l'adoption de nouveaux questionnaires. Grâce aux enseignements ainsi obtenus, ils ont effectué des études sur les prix qui ont complété leurs rapports ordinaires.

- Un plus grand nombre de décisions rendues par le Tribunal conformément à la LMSI et mettant en cause des importations en provenance des États-Unis font l'objet d'une révision judiciaire par des groupes, spéciaux binationaux formés en vertu de l'ALÉ. En 1992-1993, les conclusions de préjudice rendues par le Tribunal dans la cause du dumping de la bière américaine en Colombie-Britannique lui ont été renvoyées avant d'être confirmées par un groupe spécial binational. Les

GLOSSAIRE DES ACRONYMES

ACCEU	<i>Accord commercial Canada-Etats-Unis</i>
ALÉ	<i>Accord de libre-échange entre le Canada et les Etats-Unis</i>
ALÉNA	<i>Accord de libre-échange nord-américain</i>
CRMp	Commission de révision des marchés publics
CARIBCAN	Accord entre le Canada et les pays des Antilles membres du Commonwealth
GATT	<i>Accord général sur les tarifs douaniers et le commerce</i>
Loi sur le TCCE	<i>Loi sur le Tribunal canadien du commerce extérieur</i>
LMSI	<i>Loi sur les mesures spéciales d'importation</i>
TCI	Tribunal canadien des importations
TPG	Tarif de préférence générale
TPS	Taxe sur les produits et services
TVF	Taxe de vente fédérale

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Le 16 juin 1993

L'honorable Don Mazankowski, c.p., député
Ministre des Finances
Chambre des communes
Ottawa (Ontario)
K1A 0A6

Monsieur,

J'ai l'honneur de vous transmettre, pour dépôt à la Chambre des
communes, conformément à l'article 41 de la *Loi sur le Tribunal canadien du*
commerce extérieur, le rapport annuel du Tribunal canadien du commerce extérieur
pour l'exercice se terminant le 31 mars 1993.

Je vous prie d'agréer, Monsieur, l'expression de ma considération
distinguée.

John C. Coleman

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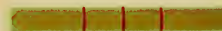
Rapport annuel

Pour l'exercice se terminant
le 31 mars 1993

Le Tribunal
canadien du
commerce extérieur

juin 1993

POUR L'EXERCICE SE TERMINANT
LE 31 MARS 1993



LE TRIBUNAL
CANADIEN
DU COMMERCE
EXTÉRIEUR

1992-1993

RAPPORT ANNUEL

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CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



CANADA

ANNUAL REPORT

1993-94

June 1994

FOR THE FISCAL YEAR ENDING
MARCH 31, 1994

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 1994**



**Canadian
International
Trade Tribunal**

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CHAIRMAN

PRÉSIDENT

June 30, 1994

The Honourable Paul M. Martin, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Martin:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 1994.

With the proclamation of the *North American Free Trade Agreement Implementation Act* on January 1, 1994, the Tribunal has been designated as the bid challenge authority for Canada. In this capacity, the Tribunal succeeds the Procurement Review Board of Canada. For this reason, the Tribunal's Annual Report for the fiscal year ending March 31, 1994, includes the Procurement Review Board of Canada's Annual Report for 1993, which closes its activities.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'A. Eyton', written over a horizontal line.

Anthony T. Eyton

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	Canadian Goods Shipments and Trade — 1992 and Average Annual Changes since 1979	73

CHAPTER I

TRIBUNAL HIGHLIGHTS 1993-94

Appointment of a New Chairman

On June 16, 1993, Mr. Anthony T. Eyton was appointed Chairman of the Canadian International Trade Tribunal (the Tribunal). Prior to his appointment to the Tribunal, Mr. Eyton was the Associate Deputy Minister with responsibility for the secretariat supporting the government's Prosperity Agenda at the Department of Industry, Science and Technology. Mr. Eyton replaced Mr. John C. Coleman who was appointed Executive Director for Canada at the European Bank for Reconstruction and Development in London, England.

Dumping and Subsidizing Injury Inquiries

The Tribunal initiated seven injury inquiries in fiscal year 1993-94, of which six dealt with dumping and one with dumping and subsidizing. The Tribunal also completed three inquiries that were still in progress at the end of fiscal year 1992-93.

As of March 31, 1994, findings had been issued in five inquiries. The Tribunal found injury in four of the five cases. The other cases were still in progress at the end of the fiscal year.

The Tribunal also issued three decisions on reviews of earlier anti-dumping findings. In two of the cases, the Tribunal decided to continue the findings.

Appeals of Decisions of the Department of National Revenue

The Tribunal issued decisions on 181 appeals by taxpayers from decisions of the Department of National Revenue (Revenue Canada) relating to customs and excise matters. The number of decisions rendered in fiscal year 1993-94 increased from 129 the previous fiscal year.

The proclamation of the *North American Free Trade Agreement Implementation Act* (NAFTA Implementation Act) provides three new appeal recourses to the Tribunal under the *Customs Act* for advance rulings and re-determinations on marking and rules of origin.

**Trade and Tariff
References**

On November 19, 1993, the Tribunal submitted its assessment and report to the government on its inquiry into the competitiveness of the Canadian cattle and beef industries in the North American and world markets.

The inquiry was referred to the Tribunal by the Governor in Council on the recommendation of the Minister of Finance, the Minister of Agriculture and the Minister of Industry, Science and Technology and Minister for International Trade.

Safeguard Inquiry

On April 16, 1993, the Governor in Council asked the Tribunal to assess whether imports of boneless beef from countries other than the United States were causing or threatening to cause serious injury to Canadian producers of like or directly competitive products.

Following a six-week inquiry, the Tribunal provided its advice to the government on May 28, 1993.

**Bid Challenge
Authority**

The NAFTA Implementation Act designated the Tribunal as the bid challenge (complaint) authority for Canada.

The Tribunal provides an opportunity for redress for potential suppliers concerned about the propriety of the procurement process relating to contracts covered by NAFTA.

**Canada's Import
Regime**

The Tribunal's Research Branch has examined how Canada's import regime and goods production, employment and trade have evolved over the past decade or so. The highlights of this analysis are presented in this annual report based on the work contained in four staff papers. They deal with the Canadian tariff system, Canada's non-tariff trade barriers, anti-dumping measures and imports, and import regimes and industry performance.

Tribunal's Caseload in Fiscal Year 1993-94

	Cases Brought Forward from Previous Fiscal Year	Cases Received or Initiated in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn	Cases Outstanding (March 31, 1994)
SIMA ACTIVITIES						
Injury Inquiries	3	7	10	5	-	5
Injury Reviews	-	4	4	3	-	1
Notices of Expiry	1	3	4	4	-	-
References	2	2	4	4	-	-
Public Interest Consideration	-	1	1	1	-	-
Requests for Review of Finding or Order	1	3	4	3	-	1
Determination on Remand (Binational Panel Review)	-	2	2	2	-	-
APPEALS						
<i>Customs Act</i>	179	138	317	46	77	194
<i>Excise Tax Act</i>	550	219	769	127	159	483
SIMA	15	37	52	6	5	41
<i>Softwood Lumber Products Export Charge Act</i>	<u>2</u>	<u>-</u>	<u>2</u>	<u>2</u>	<u>-</u>	<u>-</u>
Total	746	394	1,140	181	241	718
ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES						
Economic, Trade and Tariff-Related Matters	1	1	2	2	-	-
PROCUREMENT ACTIVITIES*						
Cases Decided Without Written Determination	0	39 ¹	39	-	5	-
Cases Decided by Written Determination	4	4 ²	8	7	-	1

* Data are on a calendar-year basis.

1. Of the 39 cases, 11 were received by the Tribunal between January 1 and March 31, 1994.

2. Of the 4 cases, 1 was received by the Tribunal between January 1 and March 31, 1994.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the *Canadian International Trade Tribunal Act* (CITT Act) and its Regulations, the *Canadian International Trade Tribunal Rules* (Tribunal's Rules of Procedure), the *Special Import Measures Act* (SIMA), the *Customs Act* and the *Excise Tax Act*.

Mandate

The Tribunal's mandate is to:

- conduct inquiries into whether dumped or subsidized imports are causing, or threatening to cause, material injury to Canadian production;
- hear taxpayers' appeals of Revenue Canada customs and excise decisions;
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance;
- consider complaints by potential suppliers concerning any aspect of the procurement process that relates to a designated contract; and
- conduct inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers.

Method of Operations

In most of its programs, the Tribunal conducts hearings that are open to the public. These are normally held in Ottawa, Ontario, the location of the Tribunal's offices, although hearings may also be held elsewhere in Canada. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, conducted generally by a panel of three members, should be carried out as "informally and expeditiously" as possible. The Tribunal has the power to subpoena witnesses and require parties to submit documents, even when these are commercially confidential. The CITT Act contains provisions that strictly control access to confidential documents.

The adjudicative decisions of the Tribunal are final, but may be reviewed or appealed, as appropriate, to the Federal Court of Canada and, ultimately, to the Supreme Court of Canada, or to a binational panel under NAFTA, in the case of a decision affecting U.S. and/or Mexican interests. Governments may appeal decisions to a dispute settlement panel under the *General Agreement on Tariffs and Trade* (GATT).

Membership

The Tribunal is composed of nine full-time members and one temporary member, including a Chairman and two Vice-Chairmen, who are appointed by the Governor in Council for a term of up to five years. A maximum of five additional members may be temporarily appointed. The Chairman is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently 10 in number, are supported by a permanent staff of 94 people. Its principal officers are the Executive Director, Research, responsible for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; the Secretary, responsible for administration, relations with the public, government departments and other governments, and the court registrar functions of the Tribunal; the General Counsel, responsible for the provision of legal services to the Tribunal; and the Director of the Procurement Review Division, responsible for the investigation of complaints by potential suppliers concerning any aspect of the procurement process. The following figure presents the organization structure of the Tribunal.

Organization Structure

CHAIRMAN

Anthony T. Eytton

VICE-CHAIRMEN

Kathleen E. Macmillan
Arthur B. Trudeau

MEMBERS

Sidney A. Fraleigh
W. Roy Hines
Michèle Blouin
Charles A. Gracey
Robert C. Coates, Q.C.
Desmond Hallissey
Lise Bergeron

RESEARCH BRANCH

Executive Director of Research
Ronald W. Erdmann

PROCUREMENT REVIEW DIVISION

Director
Jean Archambault

LEGAL SERVICES BRANCH

General Counsel
Debra P. Steger

SECRETARIAT

Secretary
Michel P. Granger

Impact of NAFTA on Tribunal Activities

In December 1992, Canada, the United States and Mexico entered into NAFTA. On January 1, 1994, the NAFTA Implementation Act came into force and amended, among other pieces of legislation, the CITT Act, SIMA, the *Customs Act* and the *Customs Tariff*. In addition, the Government of Canada made amendments to and enacted certain regulations to reflect its rights and obligations under NAFTA. The object of this section is to briefly describe how the legislative changes brought about by NAFTA have impacted on and, in some areas, expanded the Tribunal's duties and functions.

SIMA

One of the more noteworthy amendments to SIMA made the grounds for judicial review set out in subsection 18.1(4) of the *Federal Court Act* applicable to applications to the Federal Court of Appeal for judicial review of orders and findings of the Tribunal.

In addition, a number of amendments were made to SIMA to implement Canada's obligations under Chapter Nineteen of NAFTA. Specifically, the NAFTA Implementation Act amended SIMA by adding Part I.1 entitled "Dispute Settlement Respecting Goods of a NAFTA Country." Part I.1 extends to Mexico the binational panel system established pursuant to the FTA. Part I.1 has been inserted into SIMA immediately before the existing Part II, the operation of which is suspended while Part I.1 remains in force. Pursuant to Part I.1, the grounds for review set out in subsection 18.1(4) of the *Federal Court Act* have also been made applicable to requests for review by a binational panel.

Customs Act

With respect to customs, two new categories of decisions, namely, marking determinations and advance rulings under the *Customs Act*, are subject to appeal before the Tribunal. Moreover, appeals as to the determination of the origin of goods exported from United States, that could be made under the *Customs Act* since the implementation of the *Canada-United States Free Trade Agreement* (the FTA), are now extended to goods exported from Mexico. Those three types of determinations are explained below.

A person aggrieved by a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) reviewing those determinations with respect to any of these matters may appeal that decision to the Tribunal.

Rules of Origin	<p>Rules of origin are essential for determining whether goods originate in the territory of a NAFTA country and, consequently, whether they are entitled to the benefit of the tariff concessions negotiated through NAFTA. The main difficulty in determining the origin of goods arises when they contain third-country, i.e. non-originating, materials or materials originating in a country other than a NAFTA country. Two criteria exist for purposes of determining whether goods containing non-originating materials still qualify as goods originating in the NAFTA territory. The materials so incorporated in the goods to be exported must, indeed, undergo sufficient transformation so that they change tariff classification and must satisfy the regional value content requirements specifically provided for that kind of goods.</p>
Marking Determinations	<p>Marking determinations flow from the necessity to protect consumers against fraudulent or misleading indications. Therefore, prescribed categories and types of goods are to be marked in the manner specified by regulations. Marking requirements exist in Canada for both NAFTA and non-NAFTA countries. However, only determinations relating to the marking of goods from a NAFTA country are subject to appeals before the Tribunal. It is also worth noting that, in certain occasions, for instance, in the case of agricultural, textile and apparel goods, marking requirements are also a condition for the determination of the national origin of the goods.</p>
Advance Rulings	<p>Advance rulings are those obtained by an importer, an exporter or the producer of the goods to be exported to Canada. Their purpose is to provide greater certainty to traders as to the entitlement of their goods to preferential tariff treatment under NAFTA, as implemented in Canada. The matters for which an advance ruling can be requested include questions relating to regional value content requirements, change in tariff classification and qualification as originating goods and the question of whether the proposed or actual marking of goods satisfies the applicable marking requirements mentioned above.</p>
CITT Act	<p>Safeguards</p> <p>The third major area of the Tribunal's mandate affected by NAFTA is the area of safeguards. Under Article XIX of GATT, Canada and the other Contracting Parties agreed that it would be permissible to impose safeguard measures in circumstances where goods are being imported into a country in such increased quantities as to cause or threaten to cause serious injury to domestic producers of like or directly competitive goods. Canada's rights and obligations under GATT are reflected in sections 20 to 30 of the</p>

CITT Act. These provisions also reflect Canada's rights and obligations under the FTA.

Chapter Eight of NAFTA contains the parties' agreement with respect to safeguards (referred to as "Emergency Action" in NAFTA). The NAFTA Implementation Act amended the CITT Act to reflect Chapter Eight. A number of the amendments stem from definitions contemplated in Chapter Eight of NAFTA.

Surges in Imports

One of the amendments is with respect to the inclusion of provisions to address "surges" in imports into Canada from the United States and/or Mexico. These provisions enable domestic producers, or any person or association acting on behalf of domestic producers, to complain that, as a result of a surge in imports into Canada from the United States and/or Mexico, the effectiveness of a surtax imposed under the *Customs Tariff* or a restriction imposed under the *Export and Import Permits Act* is being undermined. A surge is defined in NAFTA as a significant increase in imports from the trend of imports over a recent base period.

Bid Challenges

NAFTA requires that Canada, the United States and Mexico each maintain an independent bid challenge authority. Pursuant to the NAFTA Implementation Act, on January 1, 1994, the Tribunal became Canada's bid challenge authority in respect of federal government procurement as contemplated under Article 1017 of NAFTA. In connection with the Tribunal's new procurement duties, the Governor in Council enacted the *North American Free Trade Agreement Procurement Inquiry Regulations* and amended the Tribunal's Rules of Procedure.

On occasion, a potential supplier may have reason to believe that a contract has been or is about to be awarded improperly or that, in some way, it has been wrongfully denied a contract or an opportunity to compete for one. The Tribunal provides an opportunity for redress in such circumstances.

Essentially, NAFTA guarantees national treatment and non-discrimination to goods originating in Canada, the United States and Mexico, as well as to the suppliers of such goods and services suppliers in Canada, the United States and Mexico. These measures aim to promote transparency, predictability and competition in public sector procurements.

The Tribunal has detailed regulations and rules concerning the filing of a complaint, the procedure to follow before the Tribunal and the provision of time limits for the various steps in the review process. These have been

presented in a Tribunal publication entitled Procurement Review Process: A Descriptive Guide.

NAFTA extends to designated goods and services (including construction services) which are acquired by the 100 government departments and agencies and the 11 government enterprises listed in NAFTA. It applies to government procurements with an estimated value equal to or greater than certain monetary thresholds. The monetary thresholds applicable to procurements by government departments and agencies is \$63,700 for goods, services or any combination thereof and \$8.2 million for construction contract services. The monetary thresholds applicable to procurements by government enterprises is \$318,500 for goods, services or any combination thereof and \$10.1 million for construction contract services. Finally, as between Canada and the United States, the monetary threshold for the procurement of goods by departments and agencies is \$31,800.

Relevant Legislation of the Tribunal

Section	Authority
CITT Act	
18	Special Fact-Finding and Advisory Inquiries on Economic, Trade and Tariff Issues of General or Sectoral Interest to Canada
19	Inquiries Into Tariff-Related Matters
19.1 and 23.1	Safeguard Inquiries on Goods Imported from the United States
20	Safeguard Inquiries on the Importation of Goods Into Canada or the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
30.11	Complaints on Designated Contracts

SIMA (Anti-Dumping and Countervailing Duties)

33, 34, 35 and 37	Advice to the Deputy Minister of National Revenue for Customs and Excise on Injury
42	Inquiries With Respect to Material Injury Caused by the Dumping and Subsidizing of Goods
44	Recommencement of Hearing (on Remand from the Federal Court of Canada or a Binational Panel)
45	Advice on Public Interest Considerations
61	Appeals of Re-Determination Pursuant to Section 59
76	Reviews of Findings of Material Injury
89	Rulings on Who is Importer

Customs Act

67	Appeals of Certain Decisions of the Deputy Minister of National Revenue for Customs and Excise
68	New Hearings on Remand from the Federal Court of Canada
70	References

(cont'd)

Section	Authority
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Excise Tax Act

81.19, 81.21, 81.22, 81.23 and 81.33	Appeals of Certain Decisions of the Minister of National Revenue
81.32	Extensions of Time for Objection or Appeal

Softwood Lumber Products Export Charge Act

18	Appeals
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Energy Administration Act

13.63	Appeals
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CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

Introduction

Under SIMA, Canadian producers may have access to measures to offset certain forms of unfair and injurious competition from goods exported to Canada:

- 1) at prices lower than sales in the home market or lower than the cost of production (this is called "dumping"), or
- 2) that have benefited from government grants or other assistance (this is called "subsidizing").

In Canada, the determination of dumping and subsidizing is the responsibility of Revenue Canada, while the determination of whether such dumping or subsidizing has caused, is causing or is likely to cause "material injury" or "retardation" is the Tribunal's job. In accordance with GATT international trade rules, SIMA provides that anti-dumping or countervailing duties be levied on dumped or subsidized goods only if the Tribunal decides that such practices cause or threaten to cause material injury to Canadian production of like goods, or are retarding the establishment of the production in Canada of like goods.

A Canadian producer or an association of producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Deputy Minister. The Tribunal commences its inquiry at the stage of the issuance of a preliminary determination of dumping or subsidizing by the Deputy Minister.

In conducting its inquiries and arriving at its decisions, the Tribunal tries to ensure that all interested parties are made aware of the inquiry through the issuance of a notice that is published in the Canada Gazette and forwarded to all known interested parties. It also requests information from interested parties, receives representations, conducts plant visits and holds public hearings. Parties participating in these proceedings may conduct their own cases or be represented by legal or other counsel.

In order to better serve the needs of the Tribunal for more sophisticated information, the Tribunal staff is continuously striving to improve its research methodologies. The data emanating from questionnaire responses of manufacturers, importers and purchasers form the basis of staff reports. These reports focus on the factors to be examined by the Tribunal in arriving at decisions regarding material injury. They become an integral part of the record and are made available to counsel and participants in inquiries. During the past year, questionnaires were expanded to gather information on market responsiveness to price movements of subject and like goods. Available pricing data have also been improved by means of questionnaires to purchasers of products under investigation.

The Tribunal's Rules of Procedure provide a list of factors that may be examined in arriving at a judgment about whether material injury or retardation exists. These include, among others, the effects of dumped or subsidized imports on prices and on factors such as production, sales, market shares, profits, employment and utilization of production capacity.

At the public hearing, the industry that lodged the complaint attempts to persuade the Tribunal that it has been materially injured or retarded by the dumped or subsidized goods in question. The complainant's case is usually challenged by importers and, sometimes, by exporters. After cross-examination, each side has an opportunity to respond to the other's case and to summarize its own.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Deputy Minister. The Tribunal has an additional 15 days to issue a statement of reasons supporting its finding (section 43 of SIMA). Revenue Canada assesses duties on the dumped or subsidized imports if the Tribunal has found that they are causing material injury.

Inquiries Conducted in the Last Fiscal Year

In fiscal year 1993-94, the Tribunal issued five findings under section 43 of SIMA. Another five inquiries were in progress at year end. Table 1 in this chapter summarizes these activities.

Three of the five findings issued during the fiscal year (Inquiry Nos. NQ-92-007, NQ-92-008 and NQ-92-009) dealt with flat-rolled steel products. The 1992 market for these products was estimated at \$1.5 billion. Three countries were involved in all three cases; another two were named in two cases, while a total of six countries were covered in one finding.

In Inquiry No. NQ-92-007, Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate, the Tribunal found no injury with respect to imports from the United States primarily on the grounds that imports from that source were high-priced and had returned to their traditional market share after temporarily filling a void in the marketplace created by prolonged strikes at two of the three domestic producers. As regards the other eight countries involved in the inquiry, the Tribunal found that imports, comprised mostly of low-priced products, grew steadily, thereby eroding domestic prices. Certain products, not available from domestic producers, were excluded.

In Inquiry No. NQ-92-008, Flat Hot-Rolled Carbon Steel Products, the Tribunal found no injury to the five domestic producers, as import prices were generally higher than prices for domestic goods, albeit in a declining market. Factors other than dumping were found to be increasing pressure on Canadian mills to reduce prices. Moreover, beginning in 1992, the industry experienced an upturn in demand as imports declined.

In Inquiry No. NQ-92-009, Cold-Rolled Steel Sheet Products, the case dealt with goods produced in Canada in four mills and imported from five countries. In this case, the Tribunal found that dumped imports had caused a severe price decline. In meeting this price competition, the industry incurred severe financial losses. The Tribunal excluded certain products either because the domestic mills did not produce them or because imports did not cause material injury.

In Inquiry No. NQ-93-001, Copper Pipe Fittings, the Tribunal found that the domestic industry was being materially injured by imports from specific sources in the United States, on grounds of price erosion, substantial growth in the market share held by dumped imports and deterioration in the complainant's financial performance. Certain products not made by the domestic industry and products for certain applications were excluded from the finding. The market for the subject copper pipe fittings was estimated at about \$22 million for the year 1992.

In Inquiry No. NQ-93-002, Preformed Fibreglass Pipe Insulation, the Tribunal found that the complainant, the only domestic producer, was being materially injured by imports from the United States, mostly in the form of price suppression and loss of sales and market share. The market for the subject goods was estimated at roughly \$15 million annually. During the inquiry, counsel for the Director of Investigation and Research, *Competition Act*, requested access to confidential information for the Director and his staff. The request was denied on grounds that the Tribunal may only

Reviews of Findings of Material Injury Under Section 76 of SIMA

disclose confidential information to counsel. The ruling was upheld by the Federal Court of Canada.

The Tribunal may review its findings of material injury at any time, on its own initiative or at the request of the Deputy Minister or any other person or government. Subsection 76(5) of SIMA also provides for an extant finding to lapse automatically five years after the date of issuance, unless a review has been initiated. It is Tribunal policy to notify parties eight months prior to the expiry date of a finding. If a party requests a review, the Tribunal will initiate one if it determines that it is warranted.

During the 1993-94 fiscal year, the Tribunal issued four notices of expiry for the following goods: Tillage Tools, Paint Brushes and "Heads", Sour (Tart) Cherries and Delicious Apples. Reviews were initiated in three of the four cases. The finding on Sour (Tart) Cherries from the United States (Inquiry No. CIT-2-88) expired on January 29, 1994, as no request was made for continuation.

Interested parties may also request a review at any time, pursuant to subsection 76(2) of SIMA. However, the Tribunal will initiate a review only if it determines that one is warranted, usually on the basis of "changed circumstances" sufficient to warrant a review. During the last fiscal year, the Tribunal considered three such requests. In each case, the Tribunal determined that a review was not warranted and issued an order accordingly, as required by subsection 76(3.1) of SIMA.

The purpose of a review is to determine whether anti-dumping or countervailing duties remain necessary. In doing so, the Tribunal assesses whether dumping is likely to resume or subsidizing is likely to continue and, if so, whether the dumping is likely to cause material injury to the domestic industry. In a review, the Tribunal follows procedures that are similar to those in an injury inquiry.

In the last fiscal year, the Tribunal completed three reviews. In the case of Tillage Tools (Review No. RR-93-001) and Paint Brushes and "Heads" (Review No. RR-93-003), the findings were continued. In the case of Delicious Apples (Review No. RR-92-002), the finding was rescinded as of February 7, 1994. A fourth review (Review No. RR-93-004) involving two findings concerning Induction Motors was in progress at year end.

Advices Given Under Section 37 of SIMA

Public Interest Consideration Under Section 45 of SIMA

Table 2 summarizes the Tribunal's formal review activities during the fiscal year.

Upon completion of a review, the Tribunal must issue an order with reasons, pursuant to subsection 76(4) of SIMA, much as in the case of an original injury inquiry. If the finding is rescinded, anti-dumping or countervailing duties are no longer levied on imports. If the Tribunal continues a finding, it may amend or alter the original finding to exclude a product or a country.

Table 3 lists those decisions that were in force as of March 31, 1994.

When the Deputy Minister decides not to initiate a dumping or subsidizing investigation because there is insufficient evidence of injury, the Deputy Minister or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Deputy Minister discloses a reasonable indication of material injury. The same recourse is available to any interested party under section 34 of SIMA, when the Deputy Minister decides to initiate an investigation.

Section 37 of SIMA requires that the Tribunal render its advice on the issue within 30 days, without holding a hearing, on the basis of the information that was before the Deputy Minister when the decision was reached.

During fiscal year 1993-94, the Tribunal was requested to render its advice on four occasions. In each case, it concluded that the information disclosed a reasonable indication of material injury. Each case, Copper Pipe Fittings, Preformed Fibreglass Pipe Insulation, Corrosion-Resistant Steel Sheet Products and Synthetic Baler Twine, subsequently proceeded to the inquiry stage under section 42 of SIMA.

Where, as a result of an injury inquiry, the Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties may not be in the public interest, it must report this to the Minister of Finance with a statement of the facts and reasons that led to its conclusions. It is then up to the Minister of Finance to decide whether there should be any reduction in duties. Also, during an injury inquiry, interested parties may make a request to the Tribunal for an opportunity to make representations on the

Judicial or Panel Review of SIMA Decisions

matter of public interest. If the Tribunal decides to hear public interest representations, it does so upon completion of the injury inquiry.

During the last fiscal year, the Tribunal had to render an opinion on the question of public interest in one case, Preformed Fibreglass Pipe Insulation from the United States. In the course of the inquiry, which led to a finding of material injury on November 19, 1993, several parties expressed an interest in making representations concerning the public interest. The Tribunal informed counsel and parties that they would be given the opportunity to make such representations if the Tribunal made a finding of material injury.

Shortly after the issuance of the finding, the Tribunal invited interested parties to make representations on the question of public interest. Persons wishing to respond to these representations were given the opportunity to do so.

After having considered all representations received, the Tribunal informed interested parties, on January 28, 1994, in PB-93-001, that it was not convinced that there was a public interest issue worthy of further investigation under section 45 of SIMA and that, accordingly, there would be no report issued to the Minister of Finance.

Anti-dumping and countervailing duty decisions can be appealed to the Federal Court of Canada on grounds of denial of natural justice and error of fact or law.

In cases involving goods from the United States, judicial review by the Federal Court of Canada may be replaced by review by a binational panel in accordance with amendments to SIMA brought about by the passage of the *Canada-United States Free Trade Agreement Implementation Act*.

Table 4 lists all cases presently before the Federal Court of Canada or a Binational Panel.

TABLE 1**Findings Issued Under Section 43 of SIMA Between April 1, 1993, and March 31, 1994, and Inquiries in Progress at Year End**

Inquiry No.	Product	Country of Origin	Date of Finding or Last Legal Date to Issue Finding	Finding
NQ-92-007	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom, United States and Former Yugoslav Republic of Macedonia	May 6, 1993	Injury (with product exclusions)
				No Injury (United States)
NQ-92-008	Flat Hot-Rolled Carbon Steel Products	Federal Republic of Germany, France, Italy, New Zealand, United Kingdom and United States	May 31, 1993	No Injury
NQ-92-009	Cold-Rolled Steel Sheet Products	Federal Republic of Germany, France, Italy, United Kingdom and United States	July 29, 1993	Injury (with product exclusions)
NQ-93-001	Copper Pipe Fittings	United States	October 18, 1993	Injury (with product exclusions)
NQ-93-002	Preformed Fibreglass Pipe Insulation	United States	November 19, 1993	Injury
NQ-93-003	Synthetic Baler Twine	United States	April 22, 1994	
NQ-93-004	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	May 17, 1994	

TABLE 1 (cont'd)

Inquiry No.	Product	Country of Origin	Date of Finding or Last Legal Date to Issue Finding	Finding
NQ-93-005	12-Gauge Shotshells	Czech Republic and Republic of Hungary	June 22, 1994	
NQ-93-006	Black Granite Memorials and Black Granite Slabs	India	July 20, 1994	
NQ-93-007	Corrosion-Resistant Steel Sheet Products	Australia, Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	July 29, 1994	

TABLE 2

**Orders Issued Under Section 76 of SIMA Between April 1, 1993, and
March 31, 1994, and Reviews in Progress at Year End**

Review No.	Product	Country of Origin	Date of Order	Order
RR-93-001	Tillage Tools	Brazil	November 23, 1993	Finding Continued
RR-93-002	Delicious Apples	United States	February 7, 1994	Finding Rescinded
RR-93-003	Paint Brushes and "Heads"	People's Republic of China	January 18, 1994	Finding Continued
RR-93-004	Induction Motors	United States, Brazil, Japan, Poland, Taiwan and United Kingdom	--	Currently under Review

TABLE 3**Decisions in Force as of March 31, 1994¹**

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-89-003	March 16, 1990	Subsidized Canned Ham and Canned Pork-Based Luncheon Meat	Denmark, Netherlands and European Economic Community	GIC-1-84 (August 7, 1984)
NQ-89-003	May 3, 1990	Women's Footwear	Brazil, People's Republic of China, Taiwan, Poland, Romania and Yugoslavia	
RR-89-008	June 5, 1990	Carbon Steel Welded Pipe	Republic of Korea	ADT-6-83 (June 28, 1983)
NQ-89-004	July 6, 1990	Refill Paper	Federative Republic of Brazil	
RR-89-012	September 4, 1990	Photo Albums with Self-Adhesive Leaves and Self- Adhesive Leaves	Republic of Korea, Hong Kong, People's Republic of China, Singapore, Malaysia and Taiwan	ADT-4-74 (January 24, 1975) R-3-84 (August 24, 1984) CIT-18-84 (April 26, 1985) CIT-10-85 (February 14, 1986) CIT-5-87 (November 3, 1987)
RR-89-010	September 14, 1990	Potatoes for Use in the Province of British Columbia	United States	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986)

1. This table shows the decisions in force. To determine the precise product coverage, refer to the Review No. or Inquiry No. as identified in the first column of the table.

TABLE 3 (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-89-013	October 10, 1990	Integral Horsepower and Polyphase Induction Motors	United States, Brazil, Japan, Poland, Taiwan and United Kingdom	ADT-8R-78 (April 15, 1983) CIT-6-85 (October 11, 1985)
NQ-90-003	January 2, 1991	Photo Albums with Self-Adhesive Leaves and Self- Adhesive Leaves	Indonesia, Thailand and Philippines	
RR-90-005	June 10, 1991	Oil and Gas Well Casing	Republic of Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986)
RR-90-006	July 22, 1991	Subsidized Boneless Manufacturing Beef	European Economic Community	CIT-2-86 (July 25, 1986)
NQ-90-005	July 26, 1991	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand and Venezuela	
NQ-91-001	September 5, 1991	Stainless Steel Welded Pipe	Taiwan	
NQ-91-002	October 2, 1991	Beer for Use in the Province of British Columbia	United States	
NQ-91-003	January 23, 1992	Carbon Steel Welded Pipe	Brazil	
NQ-91-004	February 7, 1992	Venetian Blinds	Sweden	

TABLE 3 (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-91-003	February 25, 1992	Twisted Polypropylene and Nylon Rope	Republic of Korea	ADT-8-82 (October 7, 1982) R-6-86 (February 17, 1987)
NQ-91-005	March 13, 1992	Toothpicks	United States	
NQ-91-006	April 21, 1992	Machine Tufted Carpeting	United States	
RR-91-004	May 22, 1992	Yellow Onions for Use in the Province of British Columbia	United States	CIT-1-87 (April 30, 1987)
RR-92-001	October 21, 1992	Waterproof Rubber Footwear	Czechoslovakia, Poland, Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and People's Republic of China	ADT-4-79 (May 25, 1979) ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987)
NQ-92-001	November 30, 1992	Iceberg Lettuce for Use in the Province of British Columbia	United States	
NQ-92-002	December 11, 1992	Bicycles and Frames	Taiwan and People's Republic of China	
NQ-92-004	January 20, 1993	Gypsum Board	United States	

TABLE 3 (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-92-003	February 25, 1993	Pocket Photo Albums and Refill Sheets	Japan, Republic of Korea, People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and Federal Republic of Germany	CIT-11-87 (February 26, 1988)
NQ-92-007	May 6, 1993	Hot-Rolled Carbon Steel Plate and High- Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom, United States and Former Yugoslav Republic of Macedonia	
NQ-92-009	July 29, 1993	Cold-Rolled Steel Sheet Products	Federal Republic of Germany, France, Italy, United Kingdom and United States	
NQ-93-001	October 18, 1993	Copper Pipe Fittings	United States	
NQ-93-002	November 19, 1993	Preformed Fibreglass Pipe Insulation	United States	
RR-93-001	November 23, 1993	Tillage Tools	Brazil	ADT-11-83 (December 28, 1983) R-9-88 (November 24, 1988)

TABLE 3 (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-93-003	January 18, 1994	Paint Brushes and "Heads"	People's Republic of China	ADT-6-84 (June 20, 1984) R-7-84 (September 28, 1984) R-13-88 (January 19, 1989)

TABLE 4**Cases Before the Federal Court of Canada or a Binational Panel Between
April 1, 1993, and March 31, 1994**

Original Inquiry No.	Product	Country of Origin	Forum	Status
NQ-90-005	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand and Venezuela	FC	Hearing not yet Scheduled
NQ-91-006	Machine Tufted Carpeting	United States	BNP	Finding of Past and Present Injury Rescinded on Remand; Finding of Future Injury Upheld
NQ-91-007	Tapered Roller Bearings	Japan	FC	Application for Judicial Review Dismissed (December 2, 1993)
NQ-92-002	Bicycles and Frames	Taiwan and People's Republic of China	FC	Appeal Discontinued (April 21, 1993)
NQ-92-004	Gypsum Board	United States	BNP	Review Terminated Prior to Hearing Upon Request of Complainant
NQ-92-007	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	United States	BNP	Awaiting Decision Pending Appointment of New Panel Member
NQ-92-007	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	FC	Hearing not yet Scheduled
NQ-92-008	Flat Hot-Rolled Carbon Steel Products	United States	BNP	Decision Pending

TABLE 4 (cont'd)

Original Inquiry No.	Product	Country of Origin	Forum	Status
NQ-92-008	Flat Hot-Rolled Carbon Steel Products	Federal Republic of Germany, France, Italy, New Zealand and United Kingdom	FC	Hearing not yet Scheduled
NQ-92-009	Cold-Rolled Steel Sheet Products	United States	BNP	Decision Pending
NQ-93-001	Copper Pipe Fittings	United States	BNP	To be Heard on July 7, 1994
NQ-93-002	Preformed Fibreglass Pipe Insulation	United States	BNP	Application Dismissed, Access to Confidential Information (November 17, 1993) To be Heard on August 5, 1994
RR-93-002	Delicious Apples	United States	BNP	Request for Panel Review Filed on March 15, 1994

Notes: FC — Federal Court of Canada
BNP — Binational Panel

CHAPTER IV

APPEALS

Introduction

The Tribunal, among its other duties, hears appeals from decisions of the Minister of National Revenue (the Minister) or of the Deputy Minister. The appeals involve mainly customs and excise matters.

The most common types of appeals are those respecting Revenue Canada's decisions on the classification of goods, which, in turn, determines the amount of tax or tariff that must be paid. Invariably, the party appealing the decision feels that another classification, under which a lower tax or tariff would apply, is more appropriate.

Although the Tribunal strives to be informal and accessible, there are certain procedures and time constraints that are imposed by law and by the Tribunal itself in order to provide quality service to the public in an efficient manner. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

Under the Tribunal's Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a "brief." Generally, the brief states under which act the appeal is launched, gives an indication of the points at issue between the appellant and the Minister or Deputy Minister (in legal terminology, the Minister or the Deputy Minister is called the respondent) and states why the appellant believes that the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth Revenue Canada's position. Once these formalities are out of the way, the Secretary of the Tribunal contacts both parties in order to schedule a hearing. Hearings are generally conducted in public, before Tribunal members.

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their cases. They also enable the Tribunal to have the best information possible to make a decision. The appellant is the first to present the facts upon which a case is based, after which the respondent's case is presented. As in a court, the appellant and the respondent can call witnesses to present evidence supporting their positions, and these witnesses are questioned by the opposing parties in order to test the validity of their evidence. When all the evidence is gathered, the parties then present arguments in support of their respective positions.

The option of a file hearing is also offered to the appellant. Where a hearing is not required and the Tribunal intends not to proceed by way of a hearing, it may dispose of the matter on the basis of the written documentation before it. Rule 25 of the Tribunal's Rules of Procedure allows the Tribunal to proceed in this manner once the following conditions have been met. Both the appellant and the respondent must agree on the facts under appeal by submitting an agreed statement of facts, or the appellant must submit a written brief and have the respondent agree, in writing, to the facts presented in it. In addition, proceeding under rule 25 requires consent of counsel for the respondent. If consent is given, the respondent has the opportunity to file a written submission. The appellant can then make further written comments on the submission before the file is considered by the Tribunal. Rule 25 also requires that a public notice of the file hearing be published in the Canada Gazette so that any other interested persons can make their own views known.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute, including the reasons for its decision. For large and complicated cases, the Tribunal may take somewhat longer in reaching a decision.

If either the appellant or the respondent disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Canada.

Late in fiscal year 1992-93, the Tribunal established an appeals task force. Its mandate was to examine various aspects of the Tribunal's appeal process, with a view to proposing changes which would streamline and generally improve that process. The task force's work culminated in a

**Cases Considered
in the Last Fiscal
Year**

detailed report to the Chairman. The report has been of significant benefit to the Tribunal, in that it served to:

- better define the role of members and various staff groups at all stages of the appeal process, from receiving appeals through to hearing and deciding them;
- establish criteria to assist members in deciding whether, in any given instance, a request for the postponement or adjournment of an appeal should be granted; and
- develop procedures for appeals proceeding by way of a file hearing to ensure that the Tribunal receives all evidence relevant to the appeal.

During the 1993-94 fiscal year, the Tribunal heard 159 appeals of which 50 related to the *Customs Act*, 104 to the *Excise Tax Act* and 5 to SIMA. Decisions were issued in 181 cases, of which 98 were heard during fiscal year 1993-94.

Decisions on Appeals

Act	Appeal	Allowed	Allowed in Part	Dismissed
<i>Customs Act</i>	46	21	2	23
<i>Excise Tax Act</i>	127	37	7	83
SIMA	6	5	1	-
<i>Softwood Lumber Products Export Charge Act</i>	2	-	-	2

The table at the end of this chapter lists decisions on appeals rendered in fiscal year 1993-94.

Of the 181 decisions rendered in the last fiscal year, 21 were appealed to the Federal Court of Canada. Of those decisions rendered in the last four fiscal years, 33 are currently before the Federal Court of Canada.

***Gilmour Sports Ltd.
v. The Deputy
Minister of National
Revenue for Customs
and Excise***

*Appeal Nos. AP-92-102
and AP-92-354*

*Decision:
Appeals allowed
(November 1, 1993)*

Of the many cases heard by the Tribunal in carrying out its appeal functions, several decisions stand out from among the others, either because of the unusual nature of the product in issue or because of the legal significance of the case. A brief résumé of a representative sample of such cases follows. These summaries have been prepared for general information purposes only. They aim to give the reader a sense of the Tribunal's work and have no legal status.

These were appeals under section 67 of the *Customs Act* from two decisions of the Deputy Minister with respect to the proper classification of snowboards in Schedule I to the *Customs Tariff*.

The appellant, Gilmour Sports Ltd., an importer and retailer of various sporting goods, imported into Canada snowboards from a U.S. manufacturer. At the time of importation of the snowboards in issue, the appellant described the snowboards as other snow-skis. However, the Deputy Minister determined that the snowboards should be classified as other sports equipment.

During the hearing held in connection with this appeal, the Tribunal heard testimony from two witnesses for the appellant who identified a number of similarities between downhill skis and snowboards. For example, the witnesses testified that snowboards and downhill skis are available in the same range of lengths, are produced from the same materials on the same machines, are used at the same facilities, require similar skills for use and are treated as part of the same industry.

Based on the testimony and evidence received relating to the general usage of, and terminology applied to, snowboards within the trade and the skiing industry, the Tribunal concluded that a snowboard is a snow-ski. In particular, the Tribunal found that the evidence showed that snowboarding is closely aligned to traditional downhill snow-skiing and to the industry associated with that sport. The Tribunal also found that the evidence showed that snowboards are generally made by the same manufacturers that produce downhill snow-skis and that they are made from the same materials and constructed in the same manner as downhill snow-skis.

The Tribunal acknowledged the point made by counsel for the respondent that a snowboard does not fit into any dictionary definition of a ski as one of a pair of long, thin runners of wood, metal, etc. However, the Tribunal was of the view that, since snowboards are used for the purpose of

***Simon and Jean
Clarke v. The
Minister of National
Revenue***

Appeal No. AP-92-065

*Decision:
Appeal allowed
(March 18, 1994)*

gliding down snow-covered inclines or over snow in much the same manner as cross-country or downhill skis are used, they are snow-skis.

The appellants, Simon and Jean Clarke, filed an application for a federal sales tax (FST) new housing rebate in the amount of \$4,767. However, the Minister rejected the application on the basis that construction of the appellants' house had not begun before 1991, as required by the rebate provisions of the *Excise Tax Act*. The issue in this appeal, therefore, was whether construction of the appellants' house had begun prior to 1991.

At the hearing, Mrs. Jean Clark told the Tribunal that, on January 1, 1991, construction of her new house had advanced to the point where the basement and electrical ditches had been dug, and the fill had been hauled away. During cross-examination, she confirmed that the footings to the building had not been poured by this date because of abnormally cold weather conditions. Mrs. Clark explained that neither the legislation nor the departmental memorandum, provided by Revenue Canada to explain the FST new housing rebate program to taxpayers, included a definition of "construction." She testified that Revenue Canada's interpretation of "construction" was not available until after January 1, 1991, thus preventing the appellants from conducting their affairs so as to be entitled to the rebate.

In argument, Mrs. Clark referred to a decision of the Federal Court of Canada, in which "construction" was defined to include "erection, repair, alteration, enlargement, addition, demolition, removal, excavation, with respect to a building." In addition, the appellants provided numerous publications that consistently included excavation within the activity of construction of a building.

Counsel for the respondent told the Tribunal that Revenue Canada considers construction to have commenced before 1991 if the footings to the building were in place on January 1, 1991. Counsel informed the Tribunal that this is clearly stated in the rebate application form. Counsel acknowledged that the word "construction" is not defined in either the legislation or the departmental memorandum. However, by referring to several dictionary definitions, it was defined to mean the act of fitting together, framing or building. Counsel argued that construction does not include excavation, which is the act of digging out soil and leaving a hole.

In defining the word "construction," the Tribunal sought a common and grammatical meaning consistent with the legislation and with the context in

***Howmark of Canada
v. The Deputy
Minister of National
Revenue for Customs
and Excise***

Appeal No. AP-92-243

*Decision:
Appeal allowed in part
(August 27, 1993)*

which the word is found. The Tribunal found the respondent's definition to be too restrictive and inconsistent with both the construction industry's and Statistics Canada's definition. Construction was defined to include excavation and, thus, construction of the appellants' house was found to have commenced prior to 1991.

The appeal dealt with three shipments into Canada of women's footwear produced in Brazil of the same description as those described in the Tribunal's finding in Inquiry No. NQ-89-003, dated May 3, 1990. When the goods were released by customs officers, the sale price for each shipment was converted to Canadian currency on the basis of the date of shipment because of the lack of information available with regard to the date of sale. On re-determination, the respondent used the dates of purchase orders that the appellant's agent issued to the Brazilian factories which produced the goods for the purpose of re-determining the applicable rate of exchange. As a result, additional anti-dumping duties were assessed. The appeal raised two issues: first, whether in making a decision on re-determination, the respondent may use information not available at the time that the goods in issue were released to establish the date of sale; and second, whether the placement of the purchase orders by the appellant's agent constituted a "sale."

The appellant's witness explained that, on the basis of written instructions of the appellant, an agent would place orders with factories in Brazil. The appellant would not hear anything further about the order until it was advised that the product was being shipped. He explained that a completed order was paid for by means of a letter of credit that could be drawn upon when the goods were shipped. The documents on which a letter of credit could be drawn upon included a designated forwarder's receipt or a bill of lading. The respondent's witness explained that the date on which purchase orders were placed with factories by the agent was chosen as the date for calculating the exchange rate, i.e. the date of sale, because it was on this date that the parties had agreed on price, quantity and date on which the goods would be shipped.

Counsel for the appellant submitted that the use of the word "shall" in section 45 of the *Special Import Measures Regulations* meant that, if the information discussed in section 44 of those Regulations was not available at the time that the goods were to be released, the date of shipment had to be used in the currency exchange calculations and that there was no opportunity to go back to the date of sale. He argued that the respondent's reliance on purchase orders as evidence of the date of sale may have been, in part,

attributable to the respondent's view that the appellant's agent was a principal and not an agent. Counsel for the appellant submitted that an offer does not become an agreement until acceptance is manifest. Counsel for the respondent submitted that proceedings under SIMA were clearly to be conducted on the most informed basis possible, i.e. on the basis of the information available when they take place. Counsel submitted that the phrase "date of sale" should be given a broad meaning consistent with the purpose of the legislation, which would include recognizing that injury to Canadian production occurs at the time that the order is placed, i.e. when the sale is made.

The word "shall" in section 45 of the *Special Import Measures Regulations* should not be interpreted so restrictively that either the respondent or importers are prevented from using information obtained subsequent to the time that the goods are released from customs possession to show when the date of sale actually took place. Acceptance of the contract was to be manifested on the earliest date that the evidence revealed that the factory was producing or had produced the goods in issue. The evidence revealed that the respondent should have used the freight forwarder's receipts as the best evidence of the date of sale and not the date of the purchase orders from the appellant's agent to the factories involved. The matter was referred back to the Deputy Minister so that anti-dumping duties could be calculated using the date of the freight forwarder's receipt as the date of sale. The appellant was to be reimbursed for any overpayment of anti-dumping duties that were determined as a result of these recalculations.

Appeal Decisions Rendered Under Section 67 (Formerly Section 47) of the *Customs Act*, Section 81.27 (Formerly Section 51.27) of the *Excise Tax Act*, Section 61 of SIMA and Section 18 of the *Softwood Lumber Products Export Charge Act* Between April 1, 1993, and March 31, 1994

Appeal No.	Appellant	Date of Decision	Decision
<i>Customs Act</i>			
AP-92-139	Takara Company Canada Limited	April 5, 1993	Dismissed
AP-92-106	Peter Kanis Jr.	May 5, 1993	Dismissed
AP-92-157	Consulac Architectural Products Ltd.	May 5, 1993	Dismissed
AP-92-007	F.W. Woolworth Co. Limited	May 10, 1993	Dismissed
AP-92-022	John Martens Company	May 10, 1993	Dismissed
AP-92-096	Weil Company Limited	May 10, 1993	Dismissed
AP-92-121	The Marley Pump Company	May 18, 1993	Dismissed
AP-91-183	Karl Hager Limb & Brace (Kelowna) Ltd.	May 19, 1993	Allowed
AP-91-152	Gasparotto/Panontin Construction Limited	May 20, 1993	Dismissed
AP-92-110	Bionaire Inc.	June 29, 1993	Allowed
AP-92-105	Nygård International Ltd.	July 8, 1993	Dismissed
AP-91-242	Gene R. White	July 21, 1993	Allowed
AP-92-152	Procedair Industries Inc.	July 22, 1993	Allowed
AP-92-112	Praher Canada Products Ltd.	August 31, 1993	Dismissed
AP-92-224	Reebok Canada Inc., A Division of Avreca International Inc.	September 1, 1993	Dismissed
AP-92-193 and AP-92-215	Radio Shack, A Division of InterTAN Canada Ltd.	September 16, 1993	Allowed
AP-92-151	Outils Royal Tools Corporation	September 17, 1993	Dismissed
AP-92-087	Apotex Inc.	September 29, 1993	Dismissed
AP-92-194	National Geographic Society	October 15, 1993	Allowed in part
2700 and 2701	IBM Canada Limited (formerly Rolm Canada Inc.)	October 18, 1993	Allowed
AP-91-133	Nabisco Brands Ltd.	October 28, 1993	Allowed
AP-92-226	Hamida Textiles Inc.	October 28, 1993	Dismissed

(cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-92-102 and AP-92-354	Gilmour Sports Ltd.	November 1, 1993	Allowed
AP-89-288	Exclusive Carpets Ltd.	November 10, 1993	Dismissed
AP-92-384	Wet Vest Inc.	December 9, 1993	Allowed
AP-92-206	Frontier Distributing o/b 531442 Ontario Inc.	December 20, 1993	Allowed
AP-92-180	Nomad East Distribution Corporation	December 22, 1993	Dismissed
AP-92-182	Electric Mobility (Canada) Corp.	January 7, 1994	Allowed
AP-92-235	Majestic Industries (Canada) Ltd.	January 7, 1994	Allowed
AP-93-032	Camco Inc. (Montréal)	January 7, 1994	Allowed
AP-92-073	Smith & Nephew Inc.	January 10, 1994	Allowed
AP-92-225	Proctor-Silex Canada Inc.	January 11, 1994	Dismissed
AP-90-213 and AP-90-214	Universal Grinding Wheel Division of Unicorn Abrasive of Canada Ltd. (now Diamant Boart Craelius Inc.) and Diamant Boart Craelius Inc.	January 13, 1994	Dismissed
AP-92-262	Electronetic Systems Corp.	January 13, 1994	Allowed
AP-92-241 and AP-92-242	Toyota Motor Manufacturing Canada Inc.	January 19, 1994	Allowed
AP-92-274	Canadian Hospital Specialties Ltd.	February 9, 1994	Allowed in part
AP-92-303	Kimberly-Clark Canada Inc.	February 15, 1994	Dismissed
AP-92-382	Paul Scholefield	February 17, 1994	Allowed
AP-92-362	David F. Howat	February 22, 1994	Dismissed
AP-92-276	Light Touch Stenographic Services Ltd.	March 18, 1994	Dismissed
AP-92-300	San Francisco Gifts Ltd.	March 18, 1994	Dismissed

Excise Tax Act

AP-91-173	Pal-Bac Developments Limited	April 5, 1993	Dismissed
AP-91-201	152633 Canada Inc./Sako Auto Leasing	April 5, 1993	Dismissed

(cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-91-267*	John Clark Building Enterprises Limited	April 5, 1993	Dismissed
AP-90-175 and AP-90-177	I.D. Foods Corporation	April 7, 1993	Allowed
AP-92-051	Davron Forest Products Ltd.	April 7, 1993	Dismissed
AP-91-240	Northwest Wholesale Co. Ltd.	April 8, 1993	Allowed
AP-92-060	Renaissance Jewellery Inc.	April 8, 1993	Dismissed
AP-92-093	474245 Ontario Limited o/a Star Custom Concrete	April 8, 1993	Dismissed
AP-92-125	Artecal Exhibit and Displays	April 15, 1993	Allowed in part
AP-89-255	Canadian Garden Products Ltd.	April 23, 1993	Dismissed
AP-91-233	Ambience Gallery & Frames	April 23, 1993	Allowed
AP-92-042	Electra Supply Inc.	May 4, 1993	Dismissed
AP-92-057	Rutherford Auto Sales Ltd.	May 5, 1993	Allowed
AP-91-020	Edwin W. Russell	May 10, 1993	Dismissed
AP-92-050	C.M.C.A. Limited	May 10, 1993	Allowed
AP-92-101	Alternate Solutions	May 10, 1993	Allowed
AP-92-143	Prairie West Industrial Ltd.	May 10, 1993	Dismissed
AP-92-145	Faurschou Farms Limited	May 10, 1993	Dismissed
AP-92-072	Golden Bear Operating Company Ltd.	May 17, 1993	Allowed
AP-91-031 and AP-92-068	D.J. Media Enterprises Inc. Bio-Static Systems Ltd.	May 20, 1993	Dismissed
AP-92-054*	Falcon Lumber Limited	June 11, 1993	Dismissed
AP-90-111	Mitel Corporation	June 11, 1993	Dismissed
AP-92-077	Glenan (Wholesale) Distributors Limited	June 11, 1993	Dismissed
AP-92-078	McDonald's Restaurants of Canada Limited	June 11, 1993	Dismissed
AP-92-191	72302 Manitoba Ltd.	June 11, 1993	Dismissed
AP-92-142	William J. Harmon	June 16, 1993	Dismissed

(cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-91-140	Trefflé Goulet & Fils Ltée	July 22, 1993	Dismissed
AP-92-133	Century International Arms Ltd.	July 22, 1993	Dismissed
AP-92-134	David Butterfield dba Sign Language Signs & Designs	July 22, 1993	Dismissed
AP-92-095	Canadian Thermos Products Inc.	July 23, 1993	Dismissed
AP-92-290	Hendrickson Canada Ltd.	July 23, 1993	Dismissed
AP-91-030	Paccar of Canada Ltd., Peterbilt of Canada Division	July 27, 1993	Allowed
AP-91-103	Quebecor Printing (Canada) Inc.	July 27, 1993	Dismissed
AP-91-104	Quebecor Publitech Inc.		
AP-91-105 and AP-91-196	British American Bank Note Inc.		
AP-92-039	Brial Holdings Ltd.	July 27, 1993	Allowed
AP-91-187	Esselte Pendaflex Canada Inc.	August 9, 1993	Dismissed
AP-91-028 and AP-91-119	Penner Doors & Hardware Ltd.	September 8, 1993	Dismissed
AP-91-135	Imperial Cabinet (1980) Co. Ltd.	September 8, 1993	Dismissed
AP-92-213	Union Tractor Ltd.	September 8, 1993	Dismissed
AP-92-104	Northern Aircool Engines Co.	September 21, 1993	Allowed
AP-92-128	Park City Products Limited	September 21, 1993	Allowed
AP-91-190 to AP-91-200	Via Rail Canada Inc.	September 28, 1993	Allowed
AP-91-077	MacMillan Bloedel Limited	September 29, 1993	Allowed
AP-92-150	Josef-Ryan Diamonds	September 30, 1993	Dismissed
AP-92-204	Georges Beaulieu	September 30, 1993	Allowed
AP-90-200	C.R. Plumbing Ltd.	October 5, 1993	Dismissed
AP-92-190	Structural Tech Corporation Ltd.	October 5, 1993	Allowed
AP-92-187	395266 Ontario Limited o/a Focus Photographic Services	October 6, 1993	Dismissed
AP-92-064	Walter H. Harmon (85) Ltd.	October 7, 1993	Allowed

(cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-92-130	"Automatic" Sprinkler of Canada, Ltd.	October 18, 1993	Allowed
AP-92-076	Modern Window Shades Ltd.	October 19, 1993	Allowed in part
AP-92-196	City Tire & Auto Centre Limited	October 19, 1993	Dismissed
AP-92-205 and AP-92-217	Lightolier, Division of Canlyte Inc.	October 19, 1993	Allowed in part
AP-92-212	P.E. Desmarais & Fils Ltée	October 20, 1993	Dismissed
2780, 2808 and 2915	Brown Steel Limited	October 21, 1993	Dismissed
AP-91-232	2284791 Manitoba Ltd.	October 28, 1993	Allowed
AP-92-030	Orly Automobile Inc.	November 10, 1993	Dismissed
AP-92-219	Tracom Ltd.	November 10, 1993	Dismissed
AP-92-167	Lakhani Gift Store	November 15, 1993	Dismissed
AP-92-221	Vern Glass Company (1976) Limited	December 13, 1993	Dismissed
AP-92-248	Carol Anne Wright	December 13, 1993	Dismissed
AP-92-086	W.G. Abrams Construction Specialties Ltd.	December 14, 1993	Dismissed
AP-92-245	Gilcam Enterprises Ltd.	December 14, 1993	Dismissed
AP-92-220	Demure Enterprises Inc.	December 21, 1993	Dismissed
AP-92-227 to AP-92-231, AP-93-044 and AP-93-045	Memorial Gardens (Manitoba) Limited Memorial Gardens (Ontario) Limited Memorial Gardens (Quebec) Limited Memorial Gardens (British Columbia) Limited Memorial Gardens (Saskatchewan) Limited Memorial Gardens Association (Alberta) Limited Memorial Gardens (Atlantic) Limited	December 24, 1993	Dismissed
AP-92-301	Rudolph Furniture Limited	January 7, 1994	Dismissed
AP-92-094	Mantia Holdings Inc.	January 10, 1994	Dismissed
AP-92-232	TOR-BRAM Electric Contracting & Maintenance Co. Ltd.	January 10, 1994	Dismissed

(cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-93-085	Esterhazy Hardware & Furniture Co. Ltd.	January 10, 1994	Dismissed
AP-90-171	Ambassador Clocks of Canada Ltd.	January 13, 1994	Dismissed
AP-92-240	Honda Canada Inc.	January 13, 1994	Dismissed
AP-92-353	Les Industries Fermco Ltée	January 13, 1994	Dismissed
AP-93-007	Lumitrol Ltd.	January 13, 1994	Dismissed
AP-93-018	Les Meubles du Sud Ltée	January 25, 1994	Allowed
AP-90-113	Microtel Limited	January 26, 1994	Allowed
AP-92-338	McCain Foods Limited	January 27, 1994	Allowed
AP-93-037	603852 Ontario Inc. o/a Tropicana Pet Shop	February 3, 1994	Dismissed
AP-92-255	Krispy Kernels (Canada) Inc.	February 9, 1994	Dismissed
AP-93-064	Imprimerie Serge Printing & Bingo	February 9, 1994	Allowed
AP-92-335	Mercedes-Benz Canada Inc.	February 15, 1994	Dismissed
AP-91-011 to AP-91-013 and AP-91-021	Dufferin Association for Community Living and Crane Drive Residence c/o Elmira & District Association for the Retarded	February 18, 1994	Dismissed
AP-93-039	G.D. Byrne Ltd.	February 18, 1994	Dismissed
AP-92-351	KSI Sanitex Limited	February 21, 1994	Dismissed
AP-92-234	Caldwell & Choong Salon	February 22, 1994	Dismissed
AP-93-088	Caleb Ltd. o/a The James Bros.	February 22, 1994	Dismissed
AP-91-118	Stretch Coachworks Inc.	February 23, 1994	Dismissed
AP-92-283	Moto Optical Ltd.	February 23, 1994	Dismissed
AP-92-266	William F. Adamson	February 28, 1994	Dismissed
AP-93-050	James Wood, Wood Alternator & Starter Rebuilders	February 28, 1994	Allowed
AP-93-068	Jim's Motor Repairs (Calgary) Ltd.	February 28, 1994	Dismissed
AP-93-073	The Kingston Brewing Company Limited	March 7, 1994	Allowed in part
AP-91-182	Light Touch Stenographic Services Ltd.	March 8, 1994	Dismissed

(cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-92-181	IGL Canada Limited	March 8, 1994	Dismissed
AP-92-249	Computalog Ltd.	March 8, 1994	Dismissed
AP-93-087	Jeriel Enterprises Ltd.	March 8, 1994	Dismissed
AP-93-239	Les Ateliers Yves Bérubé Inc.	March 11, 1994	Dismissed
AP-92-065	Simon and Jean Clarke	March 18, 1994	Allowed
AP-92-285	Earl and Sheila Carlson	March 18, 1994	Allowed
AP-92-261	Pizza Pizza Limited	March 31, 1994	Allowed in part
AP-92-135	Progressive Services Ltd.	March 31, 1994	Dismissed
AP-93-016	Therm-O-Comfort Co. Ltd.	March 31, 1994	Allowed in part
AP-93-033	788870 Ontario Limited	March 31, 1994	Allowed

Special Import Measures Act

AP-92-243	Howmark of Canada	August 27, 1993	Allowed in part
AP-92-045	M & M Trading Inc.	September 9, 1993	Allowed
AP-92-075	M & M Trading Inc.	September 9, 1993	Allowed
AP-93-010	Aldo Shoes Inc.	January 20, 1994	Allowed
AP-93-141	APR Imports Ltd.	February 28, 1994	Allowed
AP-92-372	Rola Steel Products, A Division of PRM-Gidvani International Inc.	March 1, 1994	Allowed

Softwood Lumber Products Export Charge Act

AP-91-267*	John Clark Building Enterprises Limited	April 5, 1993	Dismissed
AP-92-054*	Falcon Lumber Limited	June 11, 1993	Dismissed

* Appeal heard under more than one act.

CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

The CITT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. The government may also ask the Tribunal to inquire into injury from imports or the provision of services. Canadian producers may also petition the Tribunal to undertake import safeguard inquiries. In these inquiries, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the government or the Minister of Finance. The process and procedures for these inquiries are, in many ways, analogous to those for its material injury inquiries under SIMA.

Economic and Trade Inquiries

Under section 18 of the CITT Act, the government may ask the Tribunal to inquire into and report on "any matter in relation to the economic, trade or commercial interests of Canada with respect to any goods or services." For example, such a study may be in the form of an examination of various alternatives for proposed government action to help certain industries adjust to changing economic and trade conditions, taking into account existing programs, legislation, the international environment and Canada's trading rights and obligations. Trade questions referred to the Tribunal may involve not only imports but also export trade development and access conditions facing Canadian exports.

In the last fiscal year, the Tribunal completed its inquiry into the competitiveness of the Canadian cattle and beef industries (Reference No. GC-92-001), under section 18 of the CITT Act. The inquiry was referred to the Tribunal on November 19, 1992. The terms of reference were:

- to develop a profile of the cattle and beef industries in Canada, the United States and Mexico in a global context;

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- to review conditions and trends in the structure of the cattle and beef industries in Canada, the United States and Mexico on a national and regional basis;
 - to identify and examine factors that affect the competitiveness of the respective cattle and beef industries of Canada, the United States and Mexico in North American and other markets; and
 - to provide an overall assessment of the opportunities and challenges facing the Canadian cattle and beef industries in the coming years.

The inquiry was designed to provide interested parties with maximum access to the inquiry process. A consultative forum and preliminary hearing were held in Ottawa on January 14, 1993. These were followed by hearings in Calgary and Ottawa in March and April 1993 to give interested parties an opportunity to present facts and arguments relevant to the inquiry. The final public hearing was held in Ottawa in September 1993 to give interested parties the opportunity to comment on reports prepared by the Tribunal staff and consultants and to offer final evidence and arguments regarding the inquiry.

In its final report, tabled in Parliament on January 31, 1994, by the Minister of Finance, the Tribunal found that, on the whole, the Canadian cattle and beef industries have a bright future. The cow-calf sector was found to be strong. The feedlot sector was found to be competitive. The beef-packing sector was found to be facing the greatest challenge, partly because of higher labour costs and low plant utilization. The Tribunal also found that, on balance, the magnitude of government support to the cattle and beef industries is similar in both Canada and the United States.

Finally, the Tribunal identified five broad challenges that will continue to affect the competitiveness of the Canadian cattle and beef industries, both now and in the years to come. The first challenge is to ensure that there is unimpeded access to the U.S. market for cattle and beef. Second, the industries must work to maintain and improve the quality and consistency of their product. Third, prices need to be kept competitive through cost control. Fourth, Mexico offers a challenging new market that is three times the size of Canada's market. Lastly, access to other export markets, particularly in the Pacific Rim, will provide opportunities for the Canadian industries, but these markets will be very competitive.

Tariff-Related Inquiries

Under section 19 of the CITT Act, the Minister of Finance may refer to the Tribunal for inquiry and report "any tariff-related matter, including any matter concerning the international rights or obligations of Canada in connection therewith." Such inquiries may involve the examination of a variety of questions, such as the classification of goods or the reduction or elimination of tariffs and their impact on domestic industries. The inquiry into textile tariffs carried out in 1989-90 and the inquiry into tariff anomalies carried out in 1990 are examples of the type of work that the Tribunal may be asked to perform under section 19 of the CITT Act.

Inquiries on Injury from Imports

Under section 20 of the CITT Act, the government may ask the Tribunal to inquire into and report on any matter in relation to the importation of goods or provision of services which cause or threaten to cause serious injury to the production of goods or provision of services in Canada. Domestic producers can petition the Tribunal to undertake safeguard inquiries into serious injury from imports under sections 22 to 30 of the CITT Act. Producers can also petition the Tribunal to undertake inquiries into injury from imports at preferential tariff rates from developing countries under a standing reference from the Minister of Finance under section 19 of the CITT Act.

During the past fiscal year, the Tribunal completed its inquiry into the importation of boneless beef, originating in countries other than the United States (Reference No. GC-93-001), under section 20 of the CITT Act. On April 16, 1993, the Governor in Council directed the Tribunal to forthwith inquire into the importation of boneless beef, and to submit its report within six weeks after the date of the Order, by:

- providing an assessment of whether the importation of boneless beef, originating in countries other than the United States, is causing or threatening to cause serious injury to Canadian producers of like or directly competitive products, and
- in the event that the importation of boneless beef, originating in countries other than the United States, is found to be causing or threatening to cause serious injury to Canadian producers of like or directly competitive products, providing advice as to the most appropriate remedy to address the situation, taking into account Canada's international rights and obligations under bilateral and multilateral trade agreements.

The first two weeks of the inquiry were used to notify interested parties and to prepare staff work. The third week allowed for an exchange of information. The fourth week was set aside for the public hearing. During the following two weeks, the panel reviewed the evidence, deliberated, made its decision and prepared the report for May 28, 1993. The report was delivered to the government on the same date and tabled in Parliament on June 1, 1993.

In its report, the Tribunal concluded that increased imports of boneless beef from countries other than the United States threatened to cause serious injury in the future. It recommended that the most appropriate remedy to address the threat of serious injury would be a tariff rate quota administered under the *Meat Import Act* and the *Customs Tariff* for a period of three consecutive years, commencing on May 1, 1993, and ending on December 31, 1995. The Tribunal also recommended that a quantitative restriction be placed on imports of boneless beef from countries other than the United States in an amount of 72,021 tonnes per year that would be subject to the applicable most-favoured-nation (MFN) tariff rate. Imports above that level would be subject to an additional tariff of 25 percent *ad valorem*.

Two of the parties to the inquiry applied to the Federal Court of Appeal for an order quashing the Tribunal's report and prohibiting the Tribunal from conducting any further safeguard inquiries into the importation of boneless beef into Canada, which excluded the assessment of boneless beef imports from the United States.

In dismissing the application, the Federal Court of Appeal found that the Tribunal:

- did not err in excluding boneless beef from the United States from its inquiry, the Tribunal being under a mandatory duty to conduct its inquiry in accordance with the terms of reference established by the Governor in Council;
- did not fail or refuse to net out from the import statistics boneless beef which entered Canada, but which was later exported to the United States; and
- made a reasonable forecast of the threat of serious injury.

Global Safeguard Inquiries

Article XIX of GATT provides that a contracting party may impose restrictions on the importation of a particular product in emergency situations for temporary periods where it is demonstrated that such imports cause or threaten to cause serious injury to domestic producers. These safeguard actions may take the form of quantitative restrictions or surcharges.

Safeguard inquiries may be initiated at the request of the government under section 20 of the CITT Act, or domestic producers can file complaints of serious injury with the Tribunal under sections 22 to 30 of the CITT Act. Certain conditions must be met before the Tribunal will undertake an inquiry. In both government- and producer-triggered inquiries, the Tribunal must find that increased imports are causing injury to the production of like or directly competitive goods in Canada. If the Tribunal finds that the domestic industry is being seriously injured or that there is a threat of serious injury, then the government decides on the appropriate response. The government may ask the Tribunal to consider what the response should be if the Tribunal makes a finding of serious injury.

Sections 20.1 and 26 of the CITT Act provide that, where the Tribunal finds, in import safeguard inquiries, that goods originating in the United States and those from other countries are being imported in such quantities and under such conditions as to be a principal cause of serious injury, it must determine whether the quantity of such goods from the United States is substantial in comparison with goods of the same kind from other sources and whether these goods from the United States contribute importantly to the serious injury or threat thereof.

GPT and CARIBCAN Safeguard Inquiries

Under section 19 of the CITT Act, the Minister of Finance has given a standing reference to the Tribunal directing it to examine and report on requests by Canadian producers for relief from Canada's programs under the General Preferential Tariff (GPT) or the Arrangement between Canada and the Commonwealth Caribbean Countries (CARIBCAN). Under the GPT program, the Canadian government has reduced import tariffs for products of more than 150 developing countries. The CARIBCAN program provides duty-free access for most exports to Canada from the Commonwealth Caribbean countries. Canadian producers that think that they have been, or may be, injured by products imported under either of these programs may ask the government to either partially or entirely remove the GPT or CARIBCAN preference from any one or more of the countries to which it has been extended.

Safeguard Inquiries Under the FTA

Producers applying for relief must show that they are being, or are likely to be, injured by actual or potential imports of like or directly competitive goods which benefit from either preferential tariff. Applicants do not have to represent all, or even any specific share, of the manufacture of those goods in Canada, but the Tribunal will want to look at the situation of the whole industry when considering the application.

On January 31, 1994, the Minister of Finance tabled legislation in Parliament to extend Canada's GPT program for developing countries for a 10-year period beyond its expiry date of June 30, 1994. Bill C-5 received Royal Assent on March 11, 1994. Under the GPT program, established in 1974, over 180 developing countries and territories are entitled to lower Canadian tariffs on a wide range of products.

The Minister of Finance also announced on January 31, 1994, that, during the coming year, consultations would be held with interested parties on the possible expansion of GPT product coverage and the reduction of GPT rates. At the same time, the Minister of Finance confirmed that he intends to exclude, from the future GPT program, two products that have been subject to ongoing safeguard actions: rubber footwear and rubber inner tubes. These products have been subject to the withdrawal of GPT benefits for several years.

Under section 19.1 of the CITT Act, the Tribunal may also be asked to inquire into and report on the question of whether goods, on which tariffs are being reduced under the FTA, are being imported into Canada in such increased quantities and under such conditions that they alone constitute a principal cause of serious injury to domestic producers of like or directly competitive goods.

Under section 23 of the CITT Act, Canadian producers can also file directly with the Tribunal a complaint of serious injury because of increased imports resulting from tariff reductions under the FTA. These complaints are treated in the same way as petitions for global safeguard actions. If the Tribunal makes a finding of serious injury in an inquiry requested by the government or initiated by a producer, the government can restore tariff protection for a period of three years.

CHAPTER VI

PROCUREMENT REVIEW BOARD OF CANADA 1993 - YEAR IN REVIEW

DISPOSITION OF COMPLAINTS

All complaints under the FTA initiated with the Procurement Review Board of Canada (the Board) are registered as active cases until such time as they are dealt with and considered "closed."

Cases which are closed can be listed under either of two categories: those decided without a written determination and those that were accepted for investigation, examined and decided by written determination.

The following table is a tabulation of the 35 cases which were closed during 1993 and their disposition, including 3 cases that were finalized during January 1994.

Summary of Complaint Activity

Category 1: Cases Decided Without a Written Determination

Complaints withdrawn by the complainant during the filing process	1
Complaints resolved between parties	6
Complaints dismissed because they dealt with procurements falling outside of the Board's jurisdiction	18
Complaints rejected due to late filing	2
Complaints dismissed for lack of a valid basis	1

Category 2: Cases Decided by Written Determination

Complaints dismissed for lack of a valid basis	1
Complaints sustained in whole or in part	6

CASES DECIDED WITHOUT A WRITTEN DETERMINATION

Withdrawn During the Filing Process

Sometimes, complaints are received which contain deficiencies that preclude them from being properly filed. In these instances, the Board informs the complainant of the deficiencies in its complaint. In most cases, the complainant submits the additional information. However, there are cases where the complainant fails to correct the deficiencies. This occurred in one case. The complaint was considered "abandoned while filing."

Resolved Between Parties

Six complaints were resolved between the parties. Five were withdrawn after the complainants informed the Board that the situation had been addressed to their satisfaction by the government. In the other case, the government decided to cancel the solicitation, to revise the specifications and to issue a new invitation to bid. In all cases, the government's actions eliminated the bases of the complaints.

Lack of Jurisdiction

In 18 cases, the Board decided that it did not have jurisdiction to hear the complaints. Five of these cases related to procurements having estimated values exceeding the upper monetary limit of \$204,000, and three procurements had an estimated value below the lower monetary limit of \$29,000. Two complaints related to procurements for classes of goods which are not covered under the FTA when procured for the Department of National Defence. One complaint concerned the procurement of goods on behalf of an "excluded" entity, namely, the Department of Fisheries and Oceans. Finally, seven complaints related to procurements that were for services and that were, therefore, not covered under the FTA, which covers only the purchase of goods.

Late Filing

In two cases, the Board did not accept complaints for investigation because they were received after the expiry of the time limit allowed for filing. In one case, the complainant filed its initial complaint claiming a restrictive specification with the government more than 20 days after its receipt of the solicitation documents. Further, it filed its complaint with the Board more than 20 days after it had been informed by the government that it would not remedy the situation. In both instances, the complainants failed to comply with the prescribed time limit for filing, namely, 10 days from when one knew or should have known the basis of its complaint. In the

second case, the complainant conceded that it was late in filing the complaint. Since the complainant showed no good reasons for lateness and given that, in the Board's opinion, the complaint did not raise an issue significant to the procurement system, the complaint was rejected.

Lack of Valid Basis

One complaint was received which, in the Board's opinion, lacked a valid basis. The complainant alleged that it had not been informed of a particular provision dealing with the eligibility of goods. A summary examination of the material submitted by the complainant showed that the said provisions were clearly mentioned in the solicitation documents received by the complainant.

CASES DECIDED BY WRITTEN DETERMINATION

Sole Source

A complaint (G92PRF66W-021-0031) was filed by Nicolet Instrument Canada Inc. of Mississauga, Ontario, concerning a procurement by the Department of Supply and Services (DSS), on behalf of the Department of National Defence, for a Nicolet digital storage oscilloscope and accessories. The complainant alleged that the equipment purchased by the government could not be "warranted" and could not be serviced by the contract awardee, as it was not an authorized agent. Further, the complainant alleged that the government violated its "Open Bidding" agreement with it by not soliciting new offers for this contract.

Determination

The complainant withdrew its first ground for complaint during the proceedings. The Board found that this procurement action had been delayed due to an expenditure freeze at the Department of National Defence. This delay endured until after the expiry of the bid acceptance period specified in the Request for Proposal (RFP) and in the offers. Since the government did not change the expiry date in the RFP, the terms and conditions contained therein and in the offers were no longer binding on the bidders. For the government, at that stage, to contact only one bidder to confirm its prices is, in the Board's opinion, tantamount to a single tendering procurement action conducted without proper notice or without proper justification, as required by the FTA. The complainant prevailed.

The Board awarded the complainant its reasonable costs related to the filing of the complaint and any proceedings. Further, the Board recommended that the government compensate the complainant for the loss of opportunity to win this contract.

Status	The government has implemented the Board's recommendation.
Evaluation of Offers	A complaint (G92PRF6621-021-0039) was filed by Chesher Equipment Ltd. of Mississauga, Ontario, concerning a procurement by DSS, on behalf of the Department of Correctional Services, for an oven combining steam and hot air. The complainant alleged that the product that it offered was not properly evaluated, that the evaluation was not thorough and that the reasons for not accepting the product were not valid.
Determination	<p>The Board found that, in conducting this procurement, the government chose to specify a "brand-name-or-equal." It was incumbent on the government to abide by the rules implied by that choice. Since no specific test had been specified by the government to assess "equals," the Board determined that the "equal" test should be that items are equal or equivalent when, without being actually identical, there is sufficient commonality between the items for them to be capable of being used for the same purpose. Further, the Board determined that the statement of requirements as set out in the RFP lent itself to a number of reasonable interpretations. Given that the government was the author of the statement of requirements and of the evaluation methodology, it was the Board's opinion that the government should be held responsible for the ambiguity that emerged and which resulted in a lack of procedural fairness in evaluating the offers. The complainant prevailed.</p> <p>The Board awarded the complainant costs for pursuit of its complaint and for the preparation of its bid.</p>
Status	The government has implemented the Board's decision.
	<p>— — — — —</p> <p>A complaint (D92PRF66W-021-0040) was filed by Business Stationers of Montréal, Quebec, concerning a Regional Individual Standing Offer issued by DSS for the supply, on an "as-and-when-required" basis, of miscellaneous office supplies for Canadian Forces Base, Gagetown, New Brunswick. The complainant alleged that the Standing Offer was issued on the basis of "substituted specifications" for which no provisions existed in the tender documents. The complainant also alleged that it was the low bidder.</p>

Determination

The Board first determined that there was no valid basis for the complainant's allegation that it was the low bidder. Apparently, the basis for the allegation was that the complainant confused the estimated "value" of the Standing Offer with the prices offered by the bidders. The Board did not accept this claim. On the issue of the "substituted specifications," the Board determined that the government had not indicated clearly that it would consider "equivalent products" in assessing bids. While this may have been the government's intent, it did not say so in the RFP. The FTA and the GATT Agreement on Government Procurement (the Code) require that, when a brand name is used in a specification, the brand name must be accompanied by words such as "or equivalent." These words are not to be assumed or read into the text where absent, they must be added. The Board determined that the application of an unstated evaluation criterion was in breach of procedural requirements, and the complainant prevailed on that ground.

The Board made no award or recommendation in this case. Though the complainant was right in its assertion that no provision existed in the solicitation concerning the offer of equals or substitute products, it did not rely thereon in preparing its bid, it did offer substitute products and it, consequently, suffered no prejudice.

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A complaint (G93PRF6666-021-0017) was filed by Network Support Inc. of Ottawa, Ontario, concerning the procurement by DSS of a mass storage media system for use by the Maritime Coastal Defence Vessel, Project Management Office. The complainant alleged that the government unfairly evaluated its response to an RFP. Further, the complainant alleged that the government attempted to change the requirement, after the submission of proposals, in a way that was not in compliance with the original specifications. Finally, it alleged that the evaluation methodology, as applied, was suspect.

Determination

The Board first found that there was no valid basis for the allegation that the government attempted to modify the requirement after bid closing. It is a fact that additional information was requested by the government after bid closing; however, the Board determined that the government did not improperly use this information in conducting the technical evaluation. On the issue of bid evaluation, the Board concluded that, although the RFP provided an evaluation methodology, the government chose to use a different one to carry out its evaluation or, alternatively, it incorrectly applied the one that it had prescribed. The Board determined that the complainant was

treated unfairly. The government was not at liberty to use an evaluation methodology that was different from the one set out in the RFP. The complainant prevailed on that ground.

The Board awarded the complainant its reasonable costs related to the filing and pursuit of the complaint, and it recommended that the procurement action be cancelled and, if there was still a requirement for the equipment, that the purchase be reopened to competition.

Status

The government has paid the award. However, it has indicated to the Board that it would not implement the Board's recommendation since the contract had already been awarded prior to the notice of complaint and that 60 to 70 percent of the contract costs had already been incurred by the contract awardee. Consequently, the government claimed that it was not feasible or reasonable to cancel the existing contract.

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A complaint (D93PRF66W-021-0019) was filed by Zepoli Inc. of Dorval, Quebec, concerning the procurement by DSS of turnbuckle assemblies for the Department of National Defence. The complainant alleged that the government erroneously awarded the contract to a supplier that was not the lowest bidder and, having recognized that fact, that the government was now looking for an excuse to set aside the complainant's claim for loss of profit. In addition, the complainant alleged that the government omitted to state part of the client department's technical requirements (need for a galvanized finish) in the tender documentation.

Determination

In this case, the government chose to rely on the successful bidder's certifications to determine the technical responsiveness of offers. According to the RFP, the lowest "at destination" priced responsive offerer was to be awarded the contract. The government made a mistake in identifying the lowest-priced responsive offer. The complainant and the government agreed on this point and further agreed that, but for the government's error, the complainant would have been awarded the contract. The Board found in favour of the complainant on this ground. The government conceded that a fair way to compensate the complainant for the prejudice caused was to pay the complainant its lost profit, and the government proceeded to establish the amount of such profit with the cooperation of the complainant. In so doing, it became apparent that the parties had different interpretations of a mandatory requirement.

The government argued that it had always ordered a product with a galvanized finish and had so stated in the tender documentation. The complainant argued that the government had not specified a product with a galvanized finish and that this was evident from the RFP. The Board determined that the mandatory requirement for a galvanized finish, although specified in a complex manner, was nevertheless sufficiently clear as stated in the RFP to be understood by a person acquainted with the usage of the trade. In the Board's opinion, the complainant could only arrive at the conclusion that the product was not to be galvanized by giving meaning and effect to certain provisions in the RFP outside their context. Consequently, the Board concluded that the government was right to assume that the complainant's store certification meant that it was offering a galvanized product and, upon finding that such was not the case, it was proper for the government to declare the complainant's offer non-responsive. The Board concluded that the complainant's offer was, in fact, never responsive and, therefore, the complainant was not entitled to compensation.

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A complaint (D93PRF6631-021-0025) was filed by Enconair Ecological Chambers Inc. of Winnipeg, Manitoba, concerning the procurement by DSS of two multi-tiered tissue culture chambers for the National Research Council of Canada. The complainant alleged that the reasons given by DSS for not accepting its bid were not legitimate. More specifically, it claimed that the statement by DSS that its offer did not meet certain mandatory requirements was not true.

Determination

In this case, the complainant raised arguments having to do with the restrictiveness of the specification and the resultant "sole sourcing." Since these grounds were not raised in a timely manner, they were not addressed by the Board. On the issue of the evaluation of offers, the Board noted that paragraph 15(e) of Article V of the Code states that "to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation." In deciding this question, the Board concluded that the complainant's offer and its own arguments during the investigation clearly indicated that the complainant's offer did not meet all the essential requirements stated in the RFP. The Board concluded that the government had conformed to the procedures set out in the RFP in reviewing and assessing the complainant's offer, and it determined that there was no valid basis for the complainant's allegation of a biased evaluation. The complaint was dismissed.

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	<p>A complaint (G93PRF6623-021-0027) was filed by ATS Scientific Inc. of Oakville, Ontario, concerning the procurement by DSS of a sequential inductively coupled plasma emission spectrometer including installation and training for the Department of Energy, Mines and Resources, Devon Coal Research Centre. The complainant alleged that, by awarding a contract to a supplier whose offer did not meet two mandatory requirements specified in the RFP, the government did not provide the complainant an equal opportunity to respond to the requirements of the procuring entity.</p>
Determination	<p>The Board found that the government did not make the award in accordance with at least one of the two essential requirements specified in the tender documentation. The Board also found that the government failed to maintain documentation and records of events substantially affecting this procurement, as required by the Code and the FTA.</p> <p>The Board awarded the complainant its reasonable costs related to the filing and pursuit of the complaint. It recommended that the contract be cancelled and, if the need still existed, that a new solicitation for the contract be issued.</p>
Status	<p>While the government agreed to pay the award, it did not agree to implement the Board's recommendation. The government informed the Board that the contract was "virtually performed" when the determination was made, that the manufacture of the equipment was by then complete and that performance testing prior to shipment from the factory was taking place. In these circumstances, the government decided that termination and re-tendering was not feasible.</p>
Recommendations by the Board	<p>Paragraph 20(a) of the <i>Canada-United States Free Trade Agreement Implementation Act</i> provides that recommendations made by the Board as part of its determinations are to be implemented by the government to the greatest extent possible. Prevailing complainants are granted this level of commitment by the government in the above act.</p> <p>On two occasions during the past year, the government indicated that it would not implement the Board's recommendations because the contracts had substantially been performed, i.e. the goods were about to be delivered. The Board considers a number of factors, including the extent to which a contract is performed, when it makes its recommendations. Contract performance alone may not be a sufficient reason to support a government decision not to implement a recommendation. The Board has raised this concern with the government, and it has recommended that the government</p>

develop a guideline to assist its officers in determining what constitutes implementation "to the greatest extent possible." This is the limit of its authority. The government has since indicated to the Board that it will review its policies in this area to ensure better results.

Summary of Complaints at the Board, 1989-93

	1989	1990	1991	1992	1993	Total
CASES DECIDED WITHOUT A WRITTEN DETERMINATION						
Resolved Between Parties	2	0	1	0	4	7
Lack of Jurisdiction	3	6	12	12	18	51
Withdrawn	0	0	2	4	2	8
Late Filing	0	1	2	3	1	7
Lack of Valid Basis	0	0	4	3	1	8
Withdrawn During Filing Process	<u>0</u>	<u>2</u>	<u>3</u>	<u>7</u>	<u>1</u>	<u>13</u>
Subtotal	5	9	24	29	27	94
CASES DECIDED BY WRITTEN DETERMINATION						
Lack of Valid Basis	0	1	3	2	1	7
Not a Potential Supplier	0	0	2	0	0	2
Sustained in Whole or in Part	<u>2</u>	<u>11</u>	<u>5</u>	<u>10</u>	<u>3</u>	<u>31</u>
Subtotal	2	12	10	12	4	40
Total	7	21	34	41	31	134

Procurement Review at the Tribunal

During the period from January 1 to March 31, 1994, the Tribunal received 12 complaints. A total of 6 complaints were not accepted by the Tribunal because they failed to meet the conditions for inquiry (1 complaint related to a procurement by an excluded entity; 2 complaints were for procurements exceeding the applicable dollar threshold; 1 complaint was for the procurement of goods of group 16, a class of goods not covered when purchased on behalf of the Department of National Defence; 1 complaint was for goods of group 58, a class of goods not covered when purchased on behalf of the Department of National Defence; and 1 complaint related to the procurement of services not covered under NAFTA) and 2 complaints were rejected by the Tribunal due to late filing. A total of 3 complaints accepted for inquiry by the Tribunal were subsequently withdrawn by the complainants and 1 complaint is currently under inquiry.

CHAPTER VII

CANADA'S IMPORT REGIME

1. INTRODUCTION

Many of the Tribunal's activities consist of injury, trade and economic inquiries. The Tribunal staff conducts economic and analytic research in support of these activities. The last three annual reports included summaries of staff analyses of the use of Canada's anti-dumping regime since 1980. The Tribunal staff has extended its research to other measures affecting Canadian imports. It is based on public data and information, mainly from Statistics Canada. The results of its research are set out in four staff papers, and this chapter summarizes the main points of that research.

Canada is a country whose economic growth has been shaped, in large part, by its ability to trade internationally. In 1990, the shares of imports and exports exceeded 28 percent of total production. There have been major changes in the international trade regime in the past several years. Trade negotiations under GATT and the FTA have changed Canada's import regime. NAFTA further modified Canada's trade regime. The Uruguay Round agreements, scheduled to be implemented starting in 1995, will further significantly alter Canada's trading environment. These changes have raised the public's interest in trade matters.

Canada's import regime is made up of many programs and policies administered by several federal government departments and agencies. The staff research highlights the main features of that regime and the changes that have occurred in recent years. It describes the import regimes of the major goods producing sectors and over 100 industries within those sectors. It covers the period starting in 1979, the year before the regime began to change because of agreements in the Tokyo Round under GATT. Changes in the regime are reviewed against Canada's economic activity, first as it stood in 1979, then in 1988, the year before the implementation of the FTA, and finally, in 1992, before changes resulting from NAFTA and the Uruguay Round. The results of the research can contribute to a better understanding of the role of Canada's import regime and of imports in the country's economic well-being.

Part 2 of this chapter provides an overview of Canada's import regime and its components, along with some historical background on the evolution of the international trade regime. Part 3 summarizes the results of the staff paper entitled The Canadian Tariff System. Part 4 describes the staff paper entitled Canada's Non-Tariff Trade Barriers. Part 5 discusses contingency protection measures and draws from the staff paper entitled Anti-Dumping Measures and Imports. Finally, Part 6 describes the import regimes and trends in production, employment and trade for each of 25 major goods producing sectors from 1979 to 1992. It is based on the staff paper entitled Import Regimes and Industry Performance: 1979-1992.

2. OVERVIEW OF THE IMPORT REGIME

Canada's import regime consists of government measures that affect the flow of imports or their prices. Because of these measures, domestic producers can price at levels above world prices of competing imports. The import regime can, thus, influence investment decisions and the relative levels of domestic production of different goods.

Components

The tariff has historically been the main component of Canada's import regime. Other measures, generally referred to as non-tariff trade barriers (NTBs), also affect imports. Some NTBs, such as quantitative restrictions (QRs) and preferential government purchasing practices, are targeted at imports. Other NTBs often have other policy goals. These include, for example, the protection of public health or the environment. Anti-dumping and countervailing duties, as well as safeguard actions, often referred to as "contingency" measures, are also part of the import regime.

Policy Objectives

Over the years, the Canadian government has pursued various industrial and related economic policy objectives. To achieve these objectives, import and other measures have been used that discriminate among different types of production of goods.

GATT

Government discretion in the use of measures affecting trade, and particularly imports, is limited by international rules and agreements. The establishment of GATT in 1947 marked a turning point for the trade and tariff policies of Canada and other "contracting parties." GATT constrained the trade chaos of the 1930s by creating a multilateral framework for international trade relations. It essentially eliminated discretion for

Multilateral Trade Negotiations

increasing tariffs or taking other measures that inhibited trade without offering compensation. It also prohibited the use of certain trade measures, such as QRs on imports and exports, with only narrow exceptions, primarily in the area of agricultural trade. There are also provisions on the use of direct financial assistance.

Canada, as a leading nation in the creation of GATT in 1947, has taken an active role in eight subsequent rounds of multilateral trade negotiations (MTNs). MTNs have been primarily concerned with negotiating tariff concessions. In more recent negotiations (Kennedy, Tokyo and especially the Uruguay Round), agreements on NTBs have taken on greater importance.

3. THE CANADIAN TARIFF SYSTEM

The staff paper entitled The Canadian Tariff System describes the key role that the tariff has had in the development of Canada's economy and its trade. In the pre-GATT world, tariffs were maintained at high levels. Average F.O.B. (imports are valued at the point of export or "free on board") tariffs ranged between 20 and 30 percent on dutiable goods and between 12 and 21 percent on all imports. The primary objective was to promote investment in domestic manufacturing in key industries, such as iron and steel, textiles and clothing.

Average F.O.B. Tariff Rates (%)

	On All Imports	On Dutiable Imports
1947	12.8	20.8
1979	4.8	14.3
1988	3.7	10.7
1992	3.1	9.1

Declining Tariffs

As a result of several successive MTNs up to and including the Tokyo Round and the FTA, average duties paid on total Canadian imports fell from 12.8 percent in 1947 to 3.1 percent in 1992. Excluding duty-free imports, average duties declined from 20.8 to 9.1 percent. Tariffs on imports from the United States will be eliminated by 1998 and, under NAFTA, those on imports from Mexico will be eliminated over a 10-year period. Agreements under the Uruguay Round will see Canada's tariffs decline even further. There will be significant tariff reductions on imports of industrial goods and on agricultural products from countries other than the United States and Mexico.

Many Rates

The Canadian tariff system is very complex. There are hundreds of rates and preferential rates depending on the product and the country of origin of imports. Rates are reduced or zero on many imports because of duties relief. This complexity created a challenge in estimating the level of protection that the tariff gives to Canadian goods production. The staff paper on tariffs describes the Canadian tariff system, including its history and legislative basis. In the February 1994 budget, the government announced a comprehensive review of the Canadian tariff system.

Most-Favoured-Nation Rates

The key tariff is the MFN rate. It applies to imports from GATT contracting parties (and certain other countries under bilateral trade agreements). If all dutiable imports had paid the MFN rate in fiscal year 1992-93, tariffs would have generated \$10.7 billion. Actual duties paid were \$3.7 billion, with \$4.2 billion of the difference being due to preferential treatment, mainly under the FTA, and imports under the Auto Pact. The remaining \$2.8 billion was due to duty relief.

Effects of Tariffs

Tariffs increase the prices of imported goods above world market levels. A domestic producer can generally sell the same product up to its world price plus the duty paid. The policy objective of a tariff is to increase or maintain the domestic production of goods subject to the tariff. The relative levels of duty rates in Canada's tariff system are generally structured to reflect the relative competitive strengths of producers of various goods.

Comparing Tariffs

Tariff comparisons across countries are normally based on the average duties paid on imports. Although well-suited for international comparisons, this measure often understates the amount of protection that the tariff gives to domestic producers of goods. To assess how much protection the import

MFN Rates versus Duty-Paid Rates

regime gives domestic industries, the Tribunal staff has calculated average tariffs in relation to the production of an industry.

The staff paper on tariffs contains calculations of two average tariffs on an industry basis: an MFN rate and a "duties paid" rate. The latter is lower because of various preferences or duty relief. Both rates are on a cost, insurance and freight (C.I.F.) rather than on an F.O.B. basis. Average rates and rate changes for 25 major Canadian goods producing sectors are shown in the table on page 68. The sectors have been grouped into four categories with similar average duty rates in 1979. Actual levels of protection for particular industries may be higher or lower than sector averages. The staff paper on tariffs contains average rates in 1979, 1988 and 1992 for over 100 industries within these major sectors.

Tariffs for Different Industries

The average duty-paid rate for all goods producing industries was 5.6 percent in 1979. The primary goods industries had little or no tariff protection. The rates for industrial goods were in the range of 5 to 13 percent, while those for consumer goods had rates that were much higher. The fourth group includes the food, machinery and transportation sectors, each with a distinctive tariff regime.

By 1992, the average duty-paid rate for all industries had declined to 2.7 percent. The decline is attributable to tariff cuts of over 30 percent on average in the Tokyo Round, followed by rate reductions under the FTA. Reductions in rates were unevenly distributed among industries. Some, such as the furniture sector, which had had relatively high tariffs in 1979, faced substantial tariff reductions. For others, such as the clothing and leather sectors, also with high rates in 1979, tariff reductions were smaller. In 1992, MFN rates remained high for a number of industries. Tariff reductions stemming from NAFTA, including the elimination of all tariffs on imports from the United States by 1998, and from the Uruguay Round will reduce average rates even further during the 1990s and into the next century.

Industry Tariff Levels and Changes

	Duty-Paid Rate				MFN Rate
	%	%	Percentage Point Decline		%
	1979	1992	1979-88	1979-92	1992
PRIMARY INDUSTRIES					
Agriculture	0.8	0.7	-2.7	0.1	1.3
Petroleum and Gas	0.4	0.0	0.4	0.4	0.2
Fishing	0.3	0.0	0.3	0.3	0.0
Mining	0.3	0.0	0.3	0.3	0.1
Quarries	0.3	0.1	-0.2	0.2	0.2
Logging	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Average	0.5	0.3	-0.9	0.2	0.6
INDUSTRIAL GOODS					
Plastics	12.9	5.7	4.0	7.2	11.8
Fabricated Metals	10.9	3.7	5.0	7.2	7.6
Electrical	10.9	2.9	5.6	8.0	7.3
Paper	10.6	2.3	5.1	8.3	7.1
Rubber	10.2	3.4	4.7	6.8	8.6
Other	9.8	4.8	4.7	5.0	7.8
Chemicals	6.7	2.5	1.8	4.2	6.6
Wood	5.3	1.7	2.4	3.6	3.3
Non-Metallics	5.3	1.6	2.0	3.7	3.9
Printing	5.0	1.2	2.3	3.8	3.9
Primary Metals	4.7	2.3	1.7	2.4	5.6
Refining	<u>0.9</u>	<u>0.3</u>	<u>0.3</u>	<u>0.6</u>	<u>0.6</u>
Average	6.7	2.3	2.6	4.4	5.5
CONSUMER GOODS					
Clothing	19.0	17.0	0.6	2.0	19.8
Leather	17.4	15.1	1.5	2.3	17.9
Furniture	17.1	4.9	6.3	12.2	13.0
Textiles	<u>13.5</u>	<u>9.2</u>	<u>1.9</u>	<u>4.3</u>	<u>15.4</u>
Average	16.6	11.4	2.5	5.2	16.6
OTHER INDUSTRIES					
Machinery	5.6	1.1	3.2	4.5	6.0
Food	4.7	3.5	-0.3	2.2	5.5
Transportation Equipment	<u>3.1</u>	<u>1.3</u>	<u>1.7</u>	<u>1.8</u>	<u>6.1</u>
Overall Average	5.6	2.7	1.4	2.9	5.3

Source: Tribunal data and Statistics Canada.

4. CANADA'S NON-TARIFF TRADE BARRIERS

The staff paper entitled Canada's Non-Tariff Trade Barriers reviews how Canada has applied NTBs to control the volume of imports into sensitive industrial sectors. They have included various QRs, government procurement practices and import licensing procedures. Other measures, such as health and safety standards, while designed to protect consumers, can have a dampening effect on imports. Environmental regulations can also have an impact on the kinds of goods sold and their prices and, consequently, on trade. As well, subsidies have a direct impact on costs of production or prices of goods sold. They can be used as a substitute for import measures.

Canada applies QRs to support the domestic poultry and dairy industries' supply management systems. Between 1977 and 1988, it also assisted the footwear industry through QRs. As well, pursuant to the Multi-Fibre Arrangement (MFA), Canada has negotiated bilateral voluntary restraint agreements on low-cost imports of textile and clothing products.

Although QRs are the most visible of Canada's NTBs, other measures have been used to achieve structural and developmental policy objectives on a sectoral basis. Measures relating to direct foreign investment controls and the growth of Japanese automobile imports are examples of other NTBs applied over the past couple of decades.

NTBs and Tariffs

While GATT negotiations have been successful in reducing tariffs in the world, they have, until the Uruguay Round, met with relatively less success in constraining the trade effects of NTBs. With lower tariffs, the effects of NTBs on trade became more visible. Governments have also offset lower tariffs by increased use of other trade measures. One of the main challenges in the Uruguay Round was to rein in a proliferation of NTBs applied outside GATT rules.

The FTA had several provisions limiting the use of NTBs. NAFTA takes those provisions further by lowering, for example, the threshold for bid challenges on government procurement (and expanding its coverage to services and construction contract services), thereby opening markets to more competition.

The Uruguay Round agreements will further reduce the trade effects of NTBs. QRs on imports of agricultural products will be replaced with tariff rate quotas. Bilateral restraints under the MFA will be phased out over a

	<p>10-year period. There are new rules on intellectual property and trade measures related to controls on foreign investment. By the end of this century, the full implementation of the FTA, NAFTA and the Uruguay Round agreements will have significantly changed the landscape of Canada's import regime. At the same time, they will have reduced trade barriers in other countries, thereby significantly improving access for Canadian producers to those markets.</p>
NTBs and Imports	<p>Because NTBs can limit the quantities of imports, they provide some amount of price protection to an industry. The problem facing analysts, and especially trade negotiators, is to estimate the effects of these measures on prices. One common way to quantify the price effects of NTBs is to express them as a "tariff equivalent" or TE. A TE is defined as the tariff rate that would produce an import level that, if set as a quota (or another NTB), would produce the same difference between foreign and domestic prices.</p>
Tariff Equivalents	<p>The staff paper on NTBs reviews various methodologies employed to calculate TEs in recent years. Studies on TEs in the agricultural, poultry and dairy industries are widespread. Those relating to other industries are less common, except for certain analyses of textile and clothing imports. Most studies have attempted to estimate a TE for such common NTBs as QRs and preferential government procurement practices. There are relatively few estimates of TEs of other non-tariff trade barriers, except in studies on agriculture done by the Organisation for Economic Co-operation and Development (OECD). These studies provided a basis for the recent Uruguay negotiations on reduction of government support to agriculture.</p>
Methodologies	<p>There are two basic approaches used to estimate TEs: the "elasticity" and the "price analysis" methods. The elasticity method observes quantity changes in supply and demand resulting from QRs and calculates their TEs by estimating price increases due to changes in supply and demand. The price analysis method measures the effects of the QR on the basis of price differentials observed in the market. Both approaches require very comprehensive yet often inaccessible detailed data on production, trade and domestic and world prices of the commodities affected by NTBs.</p>
Estimates	<p>The staff paper on NTBs focuses on QRs applied to certain agriculture, food, textile and clothing imports. Imports of many of these products have been subject to QRs in most developed countries over an extended period of years. The Tribunal staff has analyzed QRs in these sectors in an effort to estimate their effects on prices for domestic producers in Canada. TEs are estimated for the dairy and poultry industries using the price analysis</p>

method. The results reflecting the effects of both QRs and tariffs are shown below. These results represent annual averages. A calculation for each of the many different transactions during a year would result in TEs that could be considerably lower or higher than these averages. While the results are approximate, they suggest that industry protection rates have been rising. The staff paper on NTBs provides further details of these calculations.

Tariff Equivalents (%)

	1979	1988	1992
Milk	89.7	123.0	164.8
Chicken	18.5	20.1	27.7
Turkey	7.4	32.0	29.1

Source: Tribunal staff analysis of data in Canadian and other member governments' submissions to the OECD, 1992.

In the absence of readily available public information on prices, Tribunal staff could not calculate TEs for clothing and textiles. However, the respective shares of imports subject to QRs remained relatively constant over the period, as shown in the following table. The number of countries covered by agreements under the MFA increased from 21 in 1979 to 27 in 1988 and to 35 in 1992.

Shares of Value of Clothing and Textile Imports Subject to Restraints (%)

	1979	1988	1992
Clothing	71.5	71.8	67.7
Textiles	N/A	7.7	6.1

Source: Department of Industry and Textile and Clothing Board.

N/A = Not available.

5. CONTINGENCY PROTECTION MEASURES

In accordance with various GATT codes and agreements, Canada may apply temporary or "contingency" measures to protect domestic industries from imports, if they cause injury to domestic production. They include anti-dumping and countervailing duties applied to dumped or subsidized imports and safeguard actions against low-priced imports. The vast majority of contingency measures taken by Canada have consisted of anti-dumping actions. There have been relatively few countervailing duty and safeguard actions.

Anti-Dumping Duties

The staff paper entitled Anti-Dumping Measures and Imports expands the analyses presented in previous Tribunal annual reports. In addition to showing the value of domestic shipments affected by anti-dumping measures in the major goods producing sectors, the staff paper includes estimates of the value of imports affected by anti-dumping measures in those same sectors. It also extends the analysis to agricultural production and imports. During the 1980-92 period, there were 128 anti-dumping findings in place against products imported from 39 countries. The findings affected an annual average of imports of roughly \$1.0 billion and domestic shipments of about \$1.5 billion. Steel products, electrical motors, footwear, carpets and certain horticultural products are examples of goods that have had high degrees of coverage.

Countervailing Duties

Nearly all the cases where countervailing duties were applied against subsidized imports involved agricultural products. The most significant, especially in terms of production affected, were boneless manufacturing beef and grain corn.

Safeguards

Canada may take a variety of safeguard actions under Article XIX of GATT. Actions may include a surtax, QRs or a tariff rate quota. A safeguard action may be initiated at the request of the government or Canadian producers under the CITT Act. Again, an injury test must be met before the Tribunal can recommend remedial action to the government. Since 1977, a surtax has been applied only once under the *Customs Tariff*, on yellow onions in 1982. Safeguard QRs were applied against imports of footwear, between 1977 and 1988, under the *Export and Import Permits Act*. In 1993, at the request of the Governor in Council, the Tribunal conducted an inquiry into the importation of boneless beef, originating in countries other than the United States. Following a Tribunal finding of threat of

New Safeguard Provisions

serious injury, the government implemented a tariff rate quota administered under the *Meat Import Act* and the *Customs Tariff*.

Finally, safeguard provisions have undergone revisions in accordance with recent trade agreements. The FTA and NAFTA have provisions that allow for a "snapback" of tariffs on fresh fruits and vegetables, as well as general provisions for the reimposition of the MFN rate of duty under certain conditions. NAFTA has special safeguard provisions for textile and clothing imports from Mexico. As well, the Uruguay Round produced an agreement that will make it easier for GATT contracting parties to use Article XIX safeguard provisions.

6. IMPORT REGIMES AND INDUSTRY PERFORMANCE

Changes in the Economy

As international trade rules and Canada's import regime have evolved, so too has Canada's economy. The changes in Canada's import regime need to be seen against overall economic developments between 1979 and 1992. For the period as a whole, economic growth was relatively weak, especially after the recession in 1990. The structure of the Canadian economy changed significantly between 1979 and 1992. The share of service production increased sharply, while that of goods production declined. These trends in Canada's economic activity were similar to those observed in other industrialized economies.

The Importance of Trade

Trade has become much more important for goods producers. Both the share of exports in domestic goods production (including intermediate production) and imports in demand have increased sharply since 1979. The staff paper entitled Import Regimes and Industry Performance contains profiles of the major goods producing sectors. Each includes a description of the import regimes of the industries making up the sectors and changes in the import regimes since 1979. The profiles review trends in employment, production and trade in these industries.

Production and Trade of Goods

	1979	1990
Exports as a share of domestic production (%)	26.5	34.8
Imports as a share of domestic demand (%)	30.2	36.3

Source: Statistics Canada.

Effects of Imports on Economic Growth

There are various analytic techniques that can isolate the effects of changes in the import regime on goods production from other factors. These include macro-economic developments and productivity changes, as well as government regulations in various areas such as transportation and labour markets. The staff paper on import regimes and industry performance reviews these analytic techniques. It also presents the results of analyses on the possible relationships between levels of protection and growth in production. Further analysis in the staff paper on import regimes also gives particular attention to export performance and access to export markets for Canadian goods producers.

Strong Trade Growth

Although their share of the gross domestic product declined between 1979 and 1992, the value of goods producing industries' shipments increased by 4.5 percent annually. There were 2.2 million production employees in 1992, about 250,000 less than in 1979. Growth of both exports and imports was greater than that of shipments. The geographical distribution of trade in goods production also changed. The share of total imports originating in the United States declined, but a larger share of total Canadian exports were sold in the United States.

Canadian Goods Shipments and Trade 1992 and Average Annual Changes since 1979

	Employment (000s)		Shipments (\$ million)		Exports (\$ million)		Imports (\$ million)		Balance (\$ million)
	1992	% Change	1992	% Change	1992	% Change	1992	% Change	1992
Primary Industries	528	-1.1	61,633	2.9	28,166	5.0	9,723	1.3	18,443
Industrial Goods	974	-0.6	161,214	4.8	64,799	7.0	65,954	9.2	(1,155)
Consumer Goods	186	-2.6	16,000	2.7	3,367	12.4	9,086	8.9	(5,719)
Other Industries	480	-0.2	100,489	5.7	52,281	8.3	56,823	8.1	(4,542)
Total	2,168	-0.8	339,336	4.5	148,613	7.1	141,587	7.9	7,027

Source: Statistics Canada, Industry & International Trade Divisions.

Primary Industries

Except for certain parts of the agricultural sector, the primary industries had little or no tariff or other import protection. In 1992, MFN rates remained in the 10-percent range for milk and horticultural products. Certain horticultural products had anti-dumping protection during the 1980s and into the 1990s. Grain corn production had countervailing duty protection for part of the period. Milk and egg production also benefited from QRs.

The primary goods industries continue to play a very important role in the Canadian economy, especially for exports. They accounted for roughly one quarter of total goods production and employment in 1992, their share being down only slightly from 1979. There was a reduction in the size of the oil and gas sector which was not fully offset by increases in agricultural and mining activities. Some primary goods industries, especially petroleum, mining and grain, are large exporters. However, average annual export growth for all primary goods between 1979 and 1992 was weaker than for other sectors, due mainly to poor prices in the early 1990s. Imports of primary goods are relatively unimportant.

Industrial Goods

The main component of the import regime for the industrial goods producing sectors has been tariff protection. These industries did not benefit from QRs over the period. The staff paper on import regimes reviews the NTBs likely to affect the industrial goods producers. Preferential government procurement practices have affected those parts of the electrical goods sector selling to the public sector in particular. In some sectors, such

as primary metals and electrical products, however, there was considerable anti-dumping protection during the 1979-92 period.

There were major changes in tariff protection for industrial goods producers. Most sectors, except refining, had average duty-paid rates ranging from 4.7 percent (primary metals) to close to 13.0 percent (plastic industries) in 1979. The staff paper on import regimes highlights the wide ranges of rates within most of these sectors. For example, finished chemical products, such as soaps and paints, had rates in the 12.0-percent range, more than double those for industrial chemicals.

Between 1979 and 1992, tariffs for these sectors declined sharply. For example, average duties for paper production decreased by over 8 percentage points, from 10.6 to 2.3 percent. The decline for most industries resulted more from Tokyo Round cuts than from the FTA. The main exception was the chemical sector, which faced relatively larger tariff reductions under the FTA. In 1992, MFN rates still exceeded 5 percent in two thirds of the industrial goods sectors.

Industrial products accounted for over 45 percent of domestic goods production in 1992, up from 42 percent recorded in 1979. The plastics and electrical products industries, with the largest increases of goods production, also faced large declines in tariffs, amounting to over 7 percentage points. There were large average annual increases in imports of the products that these two industries produce, but their export growth exceeded import growth. Developments in these sectors seem characteristic of those in some other industrial goods sectors. Several of them recorded strong growth in both imports and exports. Most sectors increased the share of their total exports to the United States. These broad indicators suggest that many Canadian industrial goods producers are becoming specialized to serve the North American market.

Consumer Goods

In 1979, the clothing, leather, furniture and textile sectors had higher tariff rates than other goods producing industries. Except for furniture production, they also had other forms of import protection and government financial assistance in the first half of the 1980s.

Average tariff rates ranged from 19.0 percent for clothing to 13.5 percent for textiles. Rates in nearly all the segments of these four industries were also high. The depth and timing of tariff reductions that these sectors faced after 1979 differed among the four industries. In 1992, average rates for clothing and leather production were between 2 and 3 percentage points less than in 1979. Tariff reductions on textile

production were somewhat larger. In contrast, the furniture industry faced total cuts of over 12 percentage points, by far the largest tariff reduction of any industry. Except for furniture production, the consumer goods industries faced relatively small tariff reductions in the Tokyo Round.

In 1992, MFN tariffs remained high for all four industries. Following recommendations made by the Tribunal in 1990, the government is implementing reductions in tariffs on most textiles over six years, starting in 1993, to bring them more in line with those of the United States and to make the clothing industry more competitive in North America.

Footwear production, which accounted for most of the output of the leather industry, also had Article XIX safeguard QRs for a good part of the 1980s and anti-dumping duty protection from 1989 onward. Most clothing and some textile imports were subject to QRs under the MFA. Also, the carpet segment of the textile industry had protection through anti-dumping duties from 1991 onward.

The share of each of these four industries in domestic goods production declined between 1979 and 1992. However, there were distinct differences in the economic performance of each industry. Furniture production faced the largest tariff cuts and rapidly growing import competition, but also had the strongest production and export growth. The textile industry, with relatively lower tariffs in 1979, also recorded strong export growth.

Other Industries

From an import regime perspective, food, machinery and transportation equipment production does not readily fit into any of the preceding groups of industries. Tariffs on food production are in the same range as those on industrial goods production, but imports of poultry and dairy products are subject to QRs. In the machinery industry and the largest sectors of the transportation equipment industry, most imports enter duty-free. However, tariff policy and other government measures have been important factors in the development of most sectors in the transportation equipment industry.

Food

The average rate on food production was 3.5 percent in 1992, down from 4.7 percent in 1979. From the 1970s onward, dairy and poultry production, which had high tariffs, also had protection from imports through GATT Article XI QRs. The *Meat Import Act* provides a framework for beef production which also had countervailing duty protection from 1986 onward and Article XIX safeguard protection starting in 1993.

The food industry's share of domestic goods production declined between 1979 and 1992. But food production still accounted for over 7 percent of domestic goods output in 1992. In contrast with other goods producing sectors, trade in food products is relatively small compared to shipments. Growth in food imports and exports was also relatively weak compared to that in most other goods producing industries.

Machinery

In 1979, average rates for machinery production were 5.6 percent. Within the industry, most MFN tariffs were in the 10-percent range, except for agricultural machinery which had near zero rates. A significant number of machinery imports enter duty-free, mainly under the Machinery Duty Remission Program. By 1992, average rates had declined to 1.1 percent, the average MFN tariff being 6.0 percent.

Machinery production accounted for less than 3 percent of domestic goods production in 1992, down 1 percentage point from 1979. Average annual import and export growth between 1979 and 1992 was lower than that in most other industries. However, imports accounted for about three quarters of the machinery purchased in Canada in 1992. On the other hand, the industry exported more than half of its output in 1992.

**Transportation
Equipment**

In 1979, the average rate for the transportation equipment industry was 3.1 percent. Tariffs were near zero on aircraft and less than 2.0 percent for motor vehicles and parts, largely because of the Auto Pact tariff provisions. By 1992, average tariffs for transportation equipment were close to 1 percent. This decline was due to Tokyo Round reductions and to duty relief programs for new automobile manufacturers in the second half of the 1980s.

Tariff policy has been a key factor in the development of the automotive industry. The Auto Pact was a major tariff policy initiative in the 1960s. It was followed by other initiatives in the 1980s. The most recent action was a 1993 government decision to expand duty relief on imports of certain auto parts to bring their tariffs more into line with those of the United States. The industry has also benefited from government financial assistance in some instances.

Government measures also played a role in the development of the shipbuilding and aircraft sectors. Government purchases account for a significant part of the output of each sector, and some firms benefited from financial assistance.

The transportation equipment industry accounted for about 11 percent of domestic goods production in 1992, up some 2 percentage points from 1979.

The increase was due to an expansion not only of the automotive industries but also of the aircraft industry. Both industries recorded strong growth in imports and exports, whereas shipbuilding and railroad equipment production fared less well.

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This chapter has summarized the main points of staff research on Canada's import regime. For more details on any of the subjects discussed, readers should refer to the staff papers which are listed below. To obtain copies, readers should contact the Secretary of the Tribunal.

- The Canadian Tariff System
- Canada's Non-Tariff Trade Barriers
- Anti-Dumping Measures and Imports
- Import Regimes and Industry Performance: 1979-1992

PUBLICATIONS

IN FISCAL YEAR 1993-94

May 1993

An Inquiry Into the Importation of Boneless Beef, Originating in Countries Other Than the United States of America

June 1993

Annual Report for the Fiscal Year Ending March 31, 1993

November 1993

An Inquiry Into the Competitiveness of the Canadian Cattle and Beef Industries

January 1994

Procurement Review Process: A Descriptive Guide

Bulletin

Vol. 5, Nos. 1 - 6

Pamphlets

A series of pamphlets designed to inform the public of the work of the Tribunal are available. Pamphlets in the series include:

- Introduction to the Canadian International Trade Tribunal
- Appeals from Customs and Excise Decisions
- Dumping and Subsidizing Injury Inquiries
- Import Safeguard Complaints by Domestic Producers
- Import Safeguard Complaints Concerning the General Preferential Tariff (GPT) or CARIBCAN
- General Inquiries into Economic, Trade and Tariff Matters

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CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



ANNUAL REPORT

1994-95

FOR THE FISCAL YEAR ENDING
MARCH 31, 1995

June 1995

ANNUAL REPORT

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**Canadian
International
Trade Tribunal**

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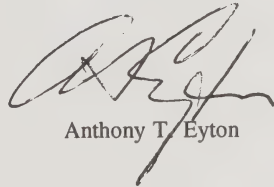
June 30, 1995

The Honourable Paul M. Martin, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 1995.

Yours sincerely,



Anthony T. Eyton

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CHAPTER I

TRIBUNAL HIGHLIGHTS 1994-95

Appointment of a New Vice-Chairman and a New Member

On May 3, 1994, Mr. Raynald Guay was appointed Vice-Chairman of the Canadian International Trade Tribunal (the Tribunal). From 1980 to 1989, he was a Member of the Anti-dumping Tribunal and the Canadian Import Tribunal.

On June 21, 1994, Mr. Lyle M. Russell was appointed Member of the Tribunal. Prior to his appointment, he was Executive Director, British Columbia and Yukon, Department of Industry, Science and Technology.

Dumping and Subsidizing Injury Inquiries and Reviews

The Tribunal initiated one injury inquiry in fiscal year 1994-95. The Tribunal also completed five inquiries that were still in progress at the end of fiscal year 1993-94. As of March 31, 1995, findings had been issued in the six inquiries.

The Tribunal also initiated five reviews of earlier injury findings. It issued three decisions, one of which related to a review that was still in progress at the end of fiscal year 1993-94.

Appeals of Decisions of the Department of National Revenue

The Tribunal issued decisions on 118 appeals from decisions of the Department of National Revenue (Revenue Canada) made under the *Customs Act*, the *Excise Tax Act* and the *Special Import Measures Act* (SIMA).

Trade and Tariff References

Pursuant to a reference from the Minister of Finance dated July 6, 1994, the Tribunal was directed, under section 19 of the *Canadian International Trade Tribunal Act* (the CITT Act), to investigate requests from domestic producers for tariff relief on imported textile inputs and to make recommendations in respect of those requests to the Minister of Finance.

As of March 31, 1995, the Tribunal had received 21 requests for tariff relief, and investigations had been initiated with regard to 6 requests. The remaining requests were either not accepted for investigation or still under consideration by the Tribunal.

World Trade Organization

The conclusion of the Uruguay Round of Multilateral Trade Negotiations in April 1994 will affect the Tribunal's legal mandate. The implementation by Parliament of the World Trade Organization (WTO) agreements on anti-dumping and countervailing duties, safeguards and procurements will lead to changes in the manner in which the Tribunal conducts its activities in these areas. In addition, the *WTO Agreement on Government Procurement* will extend the Tribunal's jurisdiction in this area.

Bid Challenge Authority

The Tribunal provides an opportunity for redress for potential suppliers concerned about the propriety of the procurement process relative to contracts covered by NAFTA. Twenty-four complaints were received by the Tribunal during fiscal year 1994-95.

Agreement on Internal Trade

The Tribunal's jurisdiction in the area of bid challenges will be increased on July 1, 1995, with the implementation of the *Agreement on Internal Trade*. The Tribunal will be the reviewing authority for federal procurements.

Quorum of the Tribunal

On December 22, 1994, the *Canadian International Trade Tribunal Regulations* (the CITT Regulations) were amended to provide the Chairman of the Tribunal with the discretion to appoint a single member in respect of mid-term reviews of safeguard measures, appeals of Revenue Canada decisions under the *Customs Act* and requests for tariff relief under the textile reference received from the Minister of Finance.

Guidelines for Public Interest Investigations

In February 1995, the Tribunal established guidelines with respect to public interest investigations in connection with an inquiry under section 42 of SIMA. These guidelines set out the procedures and time frames for such steps as the notice of commencement of inquiry, representations, the Tribunal's decision whether to investigate the public interest and the Tribunal's opinion as to whether it is in the public interest to reduce or eliminate duties.

Tribunal's Caseload in Fiscal Year 1994-95

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated	Cases Outstanding (March 31, 1995)
SIMA ACTIVITIES						
Injury Inquiries	5	1	6	6	-	-
Injury Reviews	1	7	8	3	-	5
Notices of Expiry	-	6	6	6	-	-
References (Advice)	-	2	2	1	-	1
APPEALS						
<i>Customs Act</i>	194	166	360	43	72	245
<i>Excise Tax Act</i>	483	119	602	74	45	483
SIMA	41	82	123	1	3	119
<i>Softwood Lumber Products Export Charge Act</i>	-	-	-	-	-	1
Total	718	367	1,085	118	120	848¹
TEXTILE REFERENCE						
Requests for Tariff Relief	-	21	21	1	1	19
PROCUREMENT REVIEW ACTIVITIES						
Complaints (NAFTA)	1	24	25	5	18	2

1. Almost half of these cases are being held in abeyance, upon request of the parties, pending decisions by the Federal Court on similar issues.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the CITT Act and its Regulations, the *Canadian International Trade Tribunal Rules* (Tribunal's Rules of Procedure), SIMA, the *Customs Act* and the *Excise Tax Act*.

Mandate

The Tribunal's mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to Canadian production;
- hear appeals of Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance;
- conduct inquiries into complaints by potential suppliers concerning procurement by the federal government that is covered by NAFTA;
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations.

Method of Operations

In carrying out most of its responsibilities, the Tribunal conducts hearings that are open to the public. These are normally held in Ottawa, Ontario, the location of the Tribunal's offices, although hearings may also be held elsewhere in Canada. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, conducted generally by a panel of three members, should be carried out as "informally and expeditiously" as the considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information, even when it is commercially confidential. The CITT Act contains provisions that strictly control access to confidential information.

The Tribunal's decisions may be reviewed by or appealed to, as appropriate, the Federal Court of Canada and, ultimately, the Supreme Court of Canada, or a binational panel under NAFTA, in the case of a decision affecting U.S. and/or Mexican interests. Governments that are members of the WTO may appeal decisions to a dispute settlement panel under the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.

Membership

The Tribunal may be composed of nine full-time members, including a Chairman and two Vice-Chairmen, who are appointed by the Governor in Council for a term of up to five years. A maximum of five additional members may be temporarily appointed. The Chairman is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently 8 in number, are supported by a permanent staff of 97 people. Its principal officers are the Executive Director, Research, responsible for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; the Secretary, responsible for administration, relations with the public, government departments and other governments, and the court registrar functions of the Tribunal; the General Counsel, responsible for the provision of legal services to the Tribunal; and the Director of the Procurement Review Division, responsible for the investigation of complaints by potential suppliers concerning any aspect of the procurement process.

Organization

CHAIRMAN

Anthony T. Eyton

VICE-CHAIRMEN

Arthur B. Trudeau
Raynald Guay

MEMBERS

Sidney A. Fraleigh*
W. Roy Hines*
Michèle Blouin*
Charles A. Gracey
Robert C. Coates, Q.C.
Desmond Hallissey
Lise Bergeron
Lyle M. Russell

SECRETARIAT

Secretary
Michel P. Granger

RESEARCH BRANCH

Executive Director of Research
Ronald W. Erdmann

PROCUREMENT REVIEW DIVISION

Director
Jean Archambault

LEGAL SERVICES BRANCH

General Counsel
Gerry Stobo*
Debra P. Steger*

* During fiscal year 1994-95, Mr. Fraleigh, Mr. Hines and Mrs. Blouin completed their terms as Members of the Tribunal. Mrs. Steger was seconded to the Department of Foreign Affairs and International Trade and was appointed to the Hyman Soloway Chair in Business and Trade Law for 1995-96. Mr. Stobo is on secondment from the Immigration and Refugee Board.

**Impact of the
Agreement
Establishing the
World Trade
Organization on
Tribunal Activities**

On April 15, 1994, following seven years of the Uruguay Round of Multilateral Trade Negotiations among more than 120 countries, the *Agreement Establishing the World Trade Organization* (the WTO Agreement) was adopted at a ministerial meeting at Marrakesh, Morocco. The WTO Agreement consists of several discrete agreements and understandings relating to such areas as textiles and clothing, subsidies and countervailing duties, anti-dumping duties, procurement, safeguards and dispute settlement. On January 1, 1995, the *World Trade Organization Agreement Implementation Act* (the WTO Implementation Act) came into force and amended, among other pieces of legislation, the CITT Act, SIMA, the *Customs Act* and the *Customs Tariff*. Regulations made pursuant to these acts were also amended. Some of these amendments have an impact on the Tribunal's duties and functions.

SIMA

Several amendments were made in relation to the Tribunal's conduct of an inquiry under section 42 of SIMA concerning dumping or subsidizing as found by the Deputy Minister of National Revenue (the Deputy Minister). The domestic industry provisions of the *WTO Agreement on Implementation of Article VI of GATT 1994* (the WTO Anti-Dumping Agreement) and the *WTO Agreement on Subsidies and Countervailing Measures* (the WTO Subsidies Agreement) were incorporated into a definition of domestic industry and related provisions.

Section 42 of SIMA has been amended to incorporate the injury test of "has caused injury or retardation or is threatening to cause injury," which reflects the injury test set out in the WTO Anti-Dumping Agreement and the WTO Subsidies Agreement. In addition, a new section of SIMA provides direction to the Tribunal regarding the assessment of the cumulative effect of the dumping or subsidizing of goods and the conditions for making an assessment on that basis.

The regulatory amendments include the prescription of various factors that may be considered in the Tribunal's determination of whether dumping or subsidizing has caused injury or retardation or is threatening to cause injury.

The WTO Implementation Act also creates a new review function for the Tribunal. Section 76.1 of SIMA gives the Minister of Finance the discretion to request that the Tribunal review all or a portion of an order or finding, in light of a recommendation or ruling of the WTO Dispute Settlement Body established pursuant to the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.

CITT Act

Quorum

The WTO Implementation Act amended section 13 of the CITT Act to provide that the number of members of the Tribunal necessary to constitute a quorum could be varied by regulation. On December 22, 1994, the CITT Regulations were amended to provide the Chairman of the Tribunal with the discretion to appoint a single member in respect of mid-term reviews of safeguard measures. The CITT Regulations were also amended to provide the Chairman with the discretion to appoint a single member to hear and dispose of appeals under the *Customs Act* and requests for tariff relief under the textile reference received from the Minister of Finance. The CITT Regulations require that the Chairman, in deciding whether it is appropriate to appoint a single member to a given customs or textile matter, take into account the complexity and precedential nature of the matter at issue.

Safeguards

The CITT Act was amended to implement Canada's obligations under the *WTO Agreement on Safeguards*. In particular, definitions of "serious injury" and "threat of serious injury" were added. The requirement that the importation of goods subject of a safeguard inquiry be a "principal cause" of serious injury or threat thereof, which was previously only applicable to producer-initiated safeguard inquiries, was made applicable to inquiries initiated pursuant to a reference by the Governor in Council. In addition, provisions were added regarding extension inquiries and mid-term reviews of safeguard measures.

Amendments to the *Export and Import Permits Act* and the *Customs Tariff* provide that orders imposing a safeguard measure in the form of either a quantitative restriction on imports under the *Export and Import Permits Act* or a surtax under the *Customs Tariff* may not remain in effect for more than an initial term of four years, which term may be extended for no more than four additional years. Where a measure is in effect for a period of more than three years, the CITT Act now provides that the Tribunal is to conduct a review before the midpoint of the period. In conducting such a review, the Tribunal is to look at the developments since the order was made and prepare a report on the developments, which includes the Tribunal's advice as to whether the order should remain in effect.

Prior to the expiry of an order, the Tribunal is required to publish a notice of expiry. If, in response to a notice of expiry, the Tribunal receives a properly documented request to extend the order and is satisfied that there is a reasonable indication that the order continues to be necessary and that the request is made by or on behalf of the domestic producers of a major proportion of domestic

production of like or directly competitive goods, it is to commence an extension inquiry. In conducting an extension inquiry, the Tribunal is to inquire into and report on whether an order continues to be necessary to prevent or remedy serious injury to domestic producers, whether there is evidence that the domestic producers are adjusting and any other matter referred to it by Governor in Council. The provisions dealing with the treatment of goods imported from a country that is a party to NAFTA, in a safeguard inquiry, were amended so as to also apply in the context of a safeguard extension inquiry.

The CITT Regulations were amended to extend the application of certain factors, for the purposes of determining whether there is serious injury or threat of serious injury, to inquiries initiated pursuant to a reference by the Governor in Council. These factors, which previously only applied to an inquiry initiated pursuant to a complaint by a producer, include the actual volume of the imported goods, the effect of the imported goods on prices of like or directly competitive goods in Canada and the impact of the imported goods on domestic producers of like or directly competitive goods.

In addition, the CITT Regulations were amended to prescribe the factors that the Tribunal is to consider in determining whether an order continues to be necessary and whether domestic producers are adjusting. In determining whether an order continues to be necessary to prevent or remedy serious injury, the Tribunal is to review recent developments in the domestic and world markets and evaluate the likely effects of the termination of the existing order on the basis of factors such as sales, market share, profits and losses and capacity utilization. To determine whether domestic producers are adjusting, the Tribunal is to take into account evidence of measures undertaken or planned by domestic producers, such as measures to increase productivity.

Bid Challenges

In implementing Canada's obligations under the *WTO Agreement on Government Procurement*, the Government of Canada will establish regulations relating to bid challenges covered by that agreement.

Legislative Mandate of the Tribunal

Section	Authority
CITT Act	
18	Inquiries on Economic, Trade or Commercial Interests of Canada by Reference from the Governor in Council
19	Inquiries Into Tariff-Related Matters by Reference from the Minister of Finance
19.01	Safeguard Inquiries Concerning Goods Imported from the United States and Mexico
19.02	Mid-Term Reviews of Safeguard Measures and Report
20	Safeguard Inquiries Concerning Goods Imported Into Canada and Inquiries Into the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
23 (1.01) and (1.02)	Safeguard Complaints by Domestic Producers Concerning Goods Imported from the United States and Mexico
30.08 and 30.09	Extension Inquiries of Safeguard Measures and Report
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts

SIMA (Anti-Dumping and Countervailing Duties)

33, 34, 35 and 37	Advice to Deputy Minister
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
44	Recommendation of Inquiry (on Remand from the Federal Court of Canada or a Binational Panel)
45	Advice on Public Interest Considerations
61	Appeals of Re-Determinations of the Deputy Minister Made Pursuant to Section 59
76	Reviews of Findings of Injury Initiated by the Tribunal or at the Request of the Deputy Minister or Other Interested Persons
76.1	Reviews of Findings of Injury Initiated at the Request of the Minister of Finance
89	Rulings on Who is the Importer

Legislative Mandate of the Tribunal (cont'd)

Section	Authority
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Customs Act

67	Appeals of Decisions of the Deputy Minister Concerning Value for Duty and Origin and Classification of Imported Goods
68	New Hearings on Remand from the Federal Court of Canada
70	References of the Deputy Minister Relating to the Tariff Classification or Value for Duty of Goods

Excise Tax Act

81.19, 81.21, 81.22, 81.23 and 81.33	Appeals of Assessments and Determinations of the Minister of National Revenue
81.32	Requests for Extension of Time for Objection or Appeal

Softwood Lumber Products Export Charge Act

18	Appeals of Assessments and Determinations of the Minister of National Revenue
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Energy Administration Act

13	Declarations Concerning the Amount of Oil Export Charge
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CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

Introduction

Under SIMA, Canadian producers may have access to measures to offset certain forms of unfair and injurious competition from goods exported to Canada:

- 1) at prices lower than sales in the home market or lower than the cost of production (dumping), or
- 2) that have benefited from certain types of government grants or other assistance (subsidizing).

In Canada, the determination of dumping and subsidizing is the responsibility of Revenue Canada, while the determination of whether such dumping or subsidizing has caused “material injury” or “retardation” or is threatening to cause material injury is the Tribunal’s responsibility.

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Deputy Minister. The Tribunal commences its inquiry at the stage of the issuance of a preliminary determination of dumping or subsidizing by the Deputy Minister.

In conducting its inquiries and arriving at its decisions, the Tribunal tries to ensure that all interested parties are made aware of the inquiry through the issuance of a notice that is published in the *Canada Gazette* and forwarded to all known interested parties. It also requests information from interested parties, receives representations, conducts plant visits and holds public hearings. Parties participating in these proceedings may conduct their own cases or be represented by counsel.

To better serve the needs of the Tribunal for more relevant information, the Tribunal staff is continuously striving to improve its research methodologies. The data emanating from questionnaire responses of manufacturers, importers and purchasers form the basis of staff reports. These reports focus on the factors to be examined by the Tribunal in arriving at decisions regarding material injury. They become an integral part of the record and are made available to counsel and participants in inquiries. Confidential, business-sensitive information is protected

Inquiries Conducted in the Last Fiscal Year

in accordance with provisions of the CITT Act. Only counsel who have filed declarations and undertakings may have access to such confidential information.

The CITT Regulations prescribe factors that may be considered in the Tribunal's determination of whether the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury. These factors include, among others, the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on prices and the impact of the dumped or subsidized goods on production, sales, market shares, profits, employment and utilization of production capacity.

At the public hearing, the complainant attempts to persuade the Tribunal that it has been materially injured or retarded by the dumped or subsidized goods in question. The complainant's case is usually challenged by importers and, sometimes, by exporters. After cross-examination, each side has an opportunity to respond to the other's case and to summarize its own. In many cases, the Tribunal calls witnesses who are knowledgeable about the industry and market in question.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Deputy Minister. The Tribunal has an additional 15 days to issue a statement of reasons supporting its finding (section 43 of SIMA). Revenue Canada imposes duties on the dumped or subsidized imports if the Tribunal makes a finding of material injury.

In fiscal year 1994-95, the Tribunal completed six inquiries under section 42 of SIMA. These are listed in Table 1. Two findings (Inquiry Nos. NQ-93-004 and NQ-93-007) dealt with primary steel products, one (Inquiry No. NQ-93-003) with an agricultural commodity and three (Inquiry Nos. NQ-93-005, NQ-93-006 and NQ-94-001) with consumer products. Subject to certain product exclusions, the Tribunal found that dumped imports had caused material injury to Canadian production in five cases. In the sixth case, the Tribunal made separate injury and no injury findings. In all cases, the main form of injury was the impact of dumped imports on pricing and, consequently, the financial performance of the domestic industries. The injury findings resulted in anti-dumping duties being imposed on exports from 16 countries. Exports from the United States were affected by three findings, and those from the Republic of Korea and Spain by two findings. The other countries affected by individual findings were Australia, Brazil, the Czech Republic, France, the Federal Republic of Germany, the Republic of Hungary, India, Italy, Japan, New Zealand, Sweden, the Ukraine and the United Kingdom.

Four findings concerned smaller industries, while the remaining two involved the primary steel industry. The total Canadian market value for the goods in these findings was estimated to be \$1.5 billion in 1993. The markets for synthetic baler twine, 12-gauge shotshells and black granite memorials and black granite slabs ranged between \$8 and \$20 million, while the market for Delicious, Red Delicious and Golden Delicious apples was between \$50 and \$60 million. The market for hot-rolled carbon steel plate and high-strength low-alloy plate was estimated to be over \$200 million, and for corrosion-resistant steel sheet products almost \$1.2 billion.

**Synthetic Baler
Twine**

NQ-93-003

The Tribunal found that dumped imports from the United States had caused material injury to the production in Canada of synthetic baler twine. The domestic industry suffered price erosion and suppression caused by the dumped imports. The Tribunal concluded that this situation was unlikely to change for some time in the future, in the absence of an injury finding.

**Hot-Rolled Carbon
Steel Plate and
High-Strength
Low-Alloy Plate**

NQ-93-004

The dumped imports were from Italy, the Republic of Korea, Spain and the Ukraine. The Tribunal found that the dumped imports had caused material injury to domestic production in the form of volume and market share losses and price suppression. The Tribunal also determined that the dumped imports would continue to cause material injury to domestic production, in the absence of an injury finding. In Inquiry No. NQ-92-007, the Tribunal made an injury finding against dumped imports on identical products from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the Former Yugoslav Republic of Macedonia.

12-Gauge Shotshells

NQ-93-005

The Tribunal found that dumped imports from the Czech Republic and the Republic of Hungary were not causing material injury to domestic production. However, the Tribunal found, with regard to the future, that continued dumping from these two countries was likely to cause material injury to production in Canada of 12-gauge shotshells.

**Black Granite
Memorials and Black
Granite Slabs**

NQ-93-006

The Tribunal found that dumped and subsidized imports from India had caused material injury to domestic production in the form of price suppression and financial losses. The Tribunal also concluded that injurious dumping would continue, in the absence of an injury finding.

***Corrosion-Resistant
Steel Sheet Products***

NQ-93-007

The dumped imports originated in Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States. The Tribunal found that the dumped imports had caused material injury to domestic production, primarily in the form of reduced profitability. As well, the Tribunal concluded that, in the absence of an injury finding, the dumping of the subject goods from the subject countries would continue to cause material injury to the production in Canada of like goods. The Tribunal excluded from the finding certain corrosion-resistant steel sheet products that are not produced by the domestic industry. In addition, the Tribunal excluded corrosion-resistant steel sheet products produced by the electrogalvanizing process, for use in the manufacture of motor vehicles.

***Delicious, Red
Delicious and
Golden Delicious
Apples***

NQ-94-001

The Tribunal found that dumped imports from the United States had not caused material injury to the production in Canada of Golden Delicious apples. In the case of Delicious and Red Delicious apples, the Tribunal determined that the dumped imports had caused material injury and that material injury would continue, in the absence of an injury finding. The Tribunal determined that the finding would apply throughout the year, except in July, August and September when the supply of domestically produced apples is not sufficient to satisfy the market.

**Reviews Under
Section 76 of
SIMA**

The Tribunal may review its findings of material injury at any time, on its own initiative or at the request of the Deputy Minister or any other person or government. Subsection 76(5) of SIMA provides for a finding to lapse automatically five years after the date of issuance, unless a review has been initiated. It is Tribunal policy to notify parties eight months prior to the expiry date of a finding. If a review is requested, the Tribunal will initiate one if it determines that it is warranted.

Upon completion of a review, the Tribunal must issue an order with reasons, pursuant to subsection 76(4) of SIMA, much as in the case of an injury inquiry. If the finding is rescinded, anti-dumping or countervailing duties are no longer levied on imports. If the Tribunal continues a finding, it remains in force for a further five years unless it is reviewed again. The Tribunal may rescind or continue a finding with or without amendment.

During the 1994-95 fiscal year, the Tribunal issued six notices of expiry for findings respecting the following goods: canned ham, women's footwear, carbon steel welded pipe, refill paper, photo albums (two findings) and potatoes. Reviews were initiated in all cases.

Interested parties may also request a review at any time, pursuant to subsection 76(2) of SIMA. However, the Tribunal will initiate a review only if it determines that one is warranted, usually on the basis of “changed circumstances” sufficient to warrant a review. During the last fiscal year, there were no such requests. However, the Tribunal, on its own initiative, started a review of a finding on beer imported into British Columbia.

The purpose of a review is to determine if anti-dumping or countervailing duties remain necessary. The Tribunal assesses whether dumping is likely to resume or subsidizing is likely to continue and, if so, whether the dumping or subsidizing is likely to cause material injury to domestic production. Review procedures are similar to those in a SIMA injury inquiry.

In the last fiscal year, the Tribunal completed three reviews. In the case of *Subsidized Canned Ham and Canned Pork-Based Luncheon Meat* (Review No. RR-94-002), the finding was continued. In the case of *Beer* (Review No. RR-94-001) and *Induction Motors* (Review No. RR-93-004), the findings were rescinded. Five reviews were in progress at year end. They concerned *Women’s Footwear* (Review No. RR-94-003), *Carbon Steel Welded Pipe* (Review No. RR-94-004), *Refill Paper* (Review No. RR-94-005), *Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves* (Review No. RR-94-006) and *Whole Potatoes* (Review No. RR-94-007).

Table 2 summarizes the Tribunal’s review activities during the fiscal year. Table 3 lists findings and reviews in force as of March 31, 1995.

Advices Given Under Section 37 of SIMA

When the Deputy Minister decides not to initiate a dumping or subsidizing investigation because there is insufficient evidence of injury, the Deputy Minister or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Deputy Minister discloses a reasonable indication of material injury. The same recourse is available to any person or government under section 34 of SIMA, when the Deputy Minister decides to initiate an investigation.

Section 37 of SIMA requires that the Tribunal render its advice on the issue within 30 days, without holding a hearing, on the basis of the information that was before the Deputy Minister when the decision was reached.

During fiscal year 1994-95, the Tribunal received two requests to render advice. For *Delicious, Red Delicious and Golden Delicious Apples* (Reference No. RE-94-001), it concluded that the information disclosed a reasonable

Public Interest Consideration Under Section 45 of SIMA

indication of material injury. The case subsequently proceeded to the inquiry stage under section 42 of SIMA. For *Caps, Lids and Jars for Home Canning* (Reference No. RE-94-002), a decision was pending at year end.

Where, as a result of an injury inquiry, the Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties may not be in the public interest, it must report this to the Minister of Finance with a statement of the facts and reasons that led to its conclusions. It is then up to the Minister of Finance to decide whether there should be any reduction in duties. Also, during an injury inquiry, interested parties may make a request to the Tribunal for an opportunity to make representations on the matter of public interest. If the Tribunal decides to hear public interest representations, it does so upon completion of the injury inquiry, following guidelines established during the current fiscal year. There were no representations on public interest during fiscal year 1994-95.

Judicial or Panel Review of SIMA Decisions

Anti-dumping and countervailing duty decisions can be judicially reviewed by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law.

In cases involving goods from the United States and Mexico, judicial review by the Federal Court of Canada may be replaced by review by a binational panel in accordance with amendments to SIMA brought about by the NAFTA Implementation Act.

Table 4 lists the Tribunal's decisions under section 43 or 76 of SIMA that were before a binational panel or the Federal Court of Canada for judicial review in fiscal year 1994-95. Six reviews were completed during that time. Five of the reviews were conducted by a binational panel and, in all instances, the binational panel affirmed the Tribunal's decisions. In the sixth review, the Federal Court of Canada dismissed the application for judicial review.

TABLE 1**Findings Issued Under Section 43 of SIMA Between April 1, 1994, and March 31, 1995**

Inquiry No.	Product	Country of Origin	Date of Finding or Last Legal Date to Issue Finding	Finding
NQ-93-003	Synthetic Baler Twine	United States	April 22, 1994	Injury
NQ-93-004	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	May 17, 1994	Injury (with product exclusions)
NQ-93-005	12-Gauge Shotshells	Czech Republic and Republic of Hungary	June 22, 1994	Injury
NQ-93-006	Black Granite Memorials and Black Granite Slabs	India	July 20, 1994	Injury
NQ-93-007	Corrosion-Resistant Steel Sheet Products	Australia, Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	July 29, 1994	Injury (with product exclusions)
NQ-94-001	Delicious, Red Delicious and Golden Delicious Apples	United States	February 9, 1995	Injury (Delicious and Red Delicious apples with exclusions) No Injury (Golden Delicious apples)

TABLE 2**Orders Issued Under Section 76 of SIMA Between April 1, 1994, and March 31, 1995,
and Reviews in Progress at Year End**

Review No.	Product	Country of Origin	Date of Order	Order
RR-93-004	Induction Motors	United States, Brazil, Japan, Poland, Taiwan and United Kingdom	June 30, 1994	Findings Rescinded
RR-94-001	Beer	United States	December 2, 1994	Finding Rescinded
RR-94-002	Subsidized Canned Ham and Canned Pork-Based Luncheon Meat	Denmark, Netherlands and European Economic Community	March 21, 1995	Finding Continued
RR-94-003	Women's Footwear	Brazil, People's Republic of China, Taiwan, Poland, Romania and Former Yugoslavia	Under Review	
RR-94-004	Carbon Steel Welded Pipe	Republic of Korea	Under Review	
RR-94-005	Refill Paper	Federative Republic of Brazil	Under Review	
RR-94-006	Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves	Republic of Korea, Hong Kong, People's Republic of China, Singapore, Malaysia and Taiwan	Under Review	
RR-94-007	Whole Potatoes	United States	Under Review	

TABLE 3**Decisions in Force as of March 31, 1995¹**

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
NQ-89-003	May 3, 1990	Women's Footwear	Brazil, People's Republic of China, Taiwan, Poland, Romania and Former Yugoslavia	
RR-89-008	June 5, 1990	Carbon Steel Welded Pipe	Republic of Korea	ADT-6-83 (June 28, 1983)
NQ-89-004	July 6, 1990	Refill Paper	Federative Republic of Brazil	
RR-89-012	September 4, 1990	Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves	Republic of Korea, Hong Kong, People's Republic of China, Singapore, Malaysia and Taiwan	ADT-4-74 (January 24, 1975) R-3-84 (August 24, 1984) CIT-18-84 (April 26, 1985) CIT-10-85 (February 14, 1986) CIT-5-87 (November 3, 1987)
RR-89-010	September 14, 1990	Whole Potatoes	United States	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986)
NQ-90-003	January 2, 1991	Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves	Indonesia, Thailand and Philippines	

1. This table shows the decisions in force. To determine the precise product coverage, refer to the Review No. or Inquiry No. as identified in the first column of the table.

Decisions in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-90-005	June 10, 1991	Oil and Gas Well Casing	Republic of Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986)
RR-90-006	July 22, 1991	Subsidized Boneless Manufacturing Beef	European Economic Community	CIT-2-86 (July 25, 1986)
NQ-90-005	July 26, 1991	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand and Venezuela	
NQ-91-001	September 5, 1991	Stainless Steel Welded Pipe	Taiwan	
NQ-91-003	January 23, 1992	Carbon Steel Welded Pipe	Brazil	
NQ-91-004	February 7, 1992	Venetian Blinds	Sweden	
RR-91-003	February 25, 1992	Twisted Polypropylene and Nylon Rope	Republic of Korea	ADT-8-82 (October 7, 1982) R-6-86 (February 17, 1987)
NQ-91-005	March 13, 1992	Toothpicks	United States	
NQ-91-006	April 21, 1992	Machine Tufted Carpeting	United States	
RR-91-004	May 22, 1992	Yellow Onions	United States	CIT-1-87 (April 30, 1987)

Decisions in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-92-001	October 21, 1992	Waterproof Rubber Footwear	Czechoslovakia, Poland, Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and People's Republic of China	ADT-4-79 (May 25, 1979) ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987)
NQ-92-001	November 30, 1992	Iceberg Lettuce	United States	
NQ-92-002	December 11, 1992	Bicycles and Frames	Taiwan and People's Republic of China	
NQ-92-004	January 20, 1993	Gypsum Board	United States	
RR-92-003	February 25, 1993	Pocket Photo Albums and Refill Sheets	Japan, Republic of Korea, People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and Federal Republic of Germany	CIT-11-87 (February 26, 1988)
NQ-92-007	May 6, 1993	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom, United States and Former Yugoslav Republic of Macedonia	
NQ-92-009	July 29, 1993	Cold-Rolled Steel Sheet Products	Federal Republic of Germany, France, Italy, United Kingdom and United States	

Decisions in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
NQ-93-001	October 18, 1993	Copper Pipe Fittings	United States	
NQ-93-002	November 19, 1993	Preformed Fibreglass Pipe Insulation	United States	
RR-93-001	November 23, 1993	Tillage Tools	Brazil	ADT-11-83 (December 28, 1983) R-9-88 (November 24, 1988)
RR-93-003	January 18, 1994	Paint Brushes and "Heads"	People's Republic of China	ADT-6-84 (June 20, 1984) R-7-84 (September 28, 1984) R-13-88 (January 19, 1989)
NQ-93-003	April 22, 1994	Synthetic Baler Twine	United States	
NQ-93-004	May 17, 1994	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	
NQ-93-005	June 22, 1994	12-Gauge Shotshells	Czech Republic and Republic of Hungary	
NQ-93-006	July 20, 1994	Black Granite Memorials and Black Granite Slabs	India	
NQ-93-007	July 29, 1994	Corrosion-Resistant Steel Sheet Products	Australia, Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	

Decisions in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
NQ-94-001	February 9, 1995	Delicious and Red Delicious Apples	United States	
RR-94-002	March 21, 1995	Subsidized Canned Ham and Canned Pork-Based Luncheon Meat	Denmark, Netherlands and European Economic Community	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990)

TABLE 4**Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 1994, and March 31, 1995**

Original Inquiry No.	Product	Country of Origin	Forum	File No./ Status
NQ-90-005	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand and Venezuela	FC	A-774-91 Application for Judicial Review Dismissed (January 16, 1995)
NQ-91-006	Machine Tufted Carpeting	United States	BNP	CDA-92-1904-02 Tribunal's Determination on Remand Affirmed (April 21, 1994)
NQ-92-007	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	United States	BNP	CDA-93-1904-06 Tribunal's Finding Affirmed (December 20, 1994)
NQ-92-007	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	FC	A-360-93 A-375-93 To be Heard on May 23, 1995
NQ-92-008	Flat Hot-Rolled Carbon Steel Sheet Products	United States	BNP	CDA-93-1904-07 Tribunal's Finding Affirmed (May 18, 1994)
NQ-92-008	Flat Hot-Rolled Carbon Steel Sheet Products	Federal Republic of Germany, France, Italy, New Zealand and United Kingdom	FC	A-410-93 To be Heard on May 23, 1995
NQ-92-009	Cold-Rolled Steel Sheet Products	United States	BNP	CDA-93-1904-09 Tribunal's Finding Affirmed (July 13, 1994)

Cases Before the Federal Court of Canada or a Binational Panel (cont'd)

Original Inquiry No.	Product	Country of Origin	Forum	File No./ Status
NQ-93-001	Copper Pipe Fittings	United States	BNP	CDA-93-1904-11 Tribunal's Finding Affirmed (February 13, 1995)
NQ-93-002	Preformed Fibreglass Pipe Insulation	United States	BNP	CDA-93-1904-13 Order Dismissing Panel Review (May 31, 1994)
NQ-93-003	Synthetic Baler Twine	United States	BNP	CDA-94-1904-02 Heard on January 5, 1995
NQ-93-004	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	FC	A-294-94 Application for Judicial Review Filed on June 14, 1994 Hearing not yet Scheduled
NQ-93-006	Black Granite Memorials and Black Granite Slabs	India	FC	A-400-94 Application for Judicial Review Discontinued (November 11, 1994)
NQ-93-007	Corrosion-Resistant Steel Sheet Products	United States	BNP	CDA-94-1904-04 To be Heard on April 24, 1995
NQ-93-007	Corrosion-Resistant Steel Sheet Products	Australia, Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden and United Kingdom	FC	A-411-94 Application for Judicial Review Filed on August 29, 1994 Hearing not yet Scheduled

Cases Before the Federal Court of Canada or a Binational Panel (cont'd)

Original Inquiry No.	Product	Country of Origin	Forum	File No./ Status
RR-93-002	Delicious, Red Delicious and Golden Delicious Apples	United States	BNP	CDA-94-1904-01 Request for Panel Review Terminated on July 27, 1994
RR-94-001	Beer	United States	BNP	CDA-95-1904-01 Request for Panel Review Filed on January 3, 1995 Hearing not yet Scheduled

Notes: FC — Federal Court of Canada
BNP — Binational Panel

CHAPTER IV

APPEALS

Introduction

The Tribunal, among its other duties, hears appeals from decisions of the Minister of National Revenue (the Minister) or of the Deputy Minister under the *Excise Tax Act*, the *Customs Act* and SIMA. Although the majority of the appeals involve federal sales tax assessments and determinations under the *Excise Tax Act*, the Tribunal also hears appeals concerning the tariff classification, value for duty and origin of imported goods under the *Customs Act*, as well as the application, to imported goods, of a Tribunal finding concerning dumping or subsidizing and the normal value or export price or subsidy of imported goods under SIMA. In addition, the Tribunal hears appeals under the *Softwood Lumber Products Export Charge Act* and the *Energy Administration Act*.

Although the Tribunal strives to be informal and accessible, there are certain procedures and time constraints that are imposed by law and by the Tribunal itself in order to provide quality service to the public in an efficient manner. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

Under the Tribunal's Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a "brief." Generally, the brief states under which act the appeal is launched, gives an indication of the points at issue between the appellant and the Minister or Deputy Minister (in legal terminology, the Minister or the Deputy Minister is called the respondent) and states why the appellant believes that the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth Revenue Canada's position. Once these formalities are out of the way, the Secretary of the Tribunal contacts both parties in order to schedule a hearing. Hearings are generally conducted in public, before Tribunal members.

Hearings

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their cases. They also enable the Tribunal to have the best information possible to make a decision. As in a court, the appellant and the respondent can call witnesses, and these witnesses are questioned by the opposing parties, as well as by the members, in order to test the validity of their evidence. When all the evidence is gathered, parties may present arguments in support of their respective positions.

The option of a file hearing is also offered to the appellant. Where a hearing is not required and the Tribunal intends not to proceed by way of a hearing, it may dispose of the matter on the basis of the written documentation before it. Rule 25 of the Tribunal's Rules of Procedure allows the Tribunal to proceed in this manner. Before deciding to proceed in this manner, the Tribunal requires that the appellant and respondent consent to disposing of the appeal by way of a file hearing and file with the Tribunal an agreed statement of facts in addition to their submissions. The Tribunal then publishes a notice of the file hearing in the Canada Gazette so that other interested persons can make their own views known.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute, including the reasons for its decision. For large and complicated cases, the Tribunal may take somewhat longer in reaching a decision.

If either the appellant or the respondent disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Canada.

**Appeals
Considered in the
Last Fiscal Year**

During the 1994-95 fiscal year, the Tribunal heard 89 appeals of which 35 related to the *Customs Act*, 52 to the *Excise Tax Act*, 1 to SIMA and 1 to the *Softwood Lumber Products Export Charge Act*. Decisions were issued in 118 cases, of which 54 were heard during fiscal year 1994-95.

Decisions on Appeals

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	22	1	20	43
<i>Excise Tax Act</i>	22	12	40	74
SIMA	1	-	-	1

The table at the end of this chapter lists decisions on appeals rendered in fiscal year 1994-95.

**Summary of
Selected
Decisions**

Of the many cases heard by the Tribunal in carrying out its appeal functions, several decisions stand out from among the others, either because of the unusual nature of the product in issue or because of the legal significance of the case. A brief résumé of a representative sample of such cases follows. These summaries have been prepared for general information purposes only and have no legal status.

***Michelin Tires
(Canada) Ltd. v. The
Minister of National
Revenue***

AP-93-333

*Decision:
Appeal dismissed
(March 22, 1995)*

This was an appeal under section 81.19 of the *Excise Tax Act* of a determination of the Minister that rejected an application for a refund of federal sales tax (FST) from Michelin Tires (Canada) Ltd. (Michelin). In order to obtain a refund of 13.5 percent of FST paid on the purchase of imported tires, instead of an FST inventory rebate of 8.1 percent, Michelin entered into an agreement with Uniroyal Goodrich Canada Inc. (Uniroyal Goodrich), a licensed manufacturer, for the sale of the imported tires. The transaction took effect on December 28, 1990 (the December 1990 transaction). On January 2, 1991, Uniroyal Goodrich resold the imported tires to Michelin. The Minister rejected Michelin's application on the basis that it did not meet the requirements of the *Excise Tax Act*.

The issue in this appeal was whether Michelin was entitled to a refund of FST paid on the imported tires as a result of the December 1990 transaction. More particularly, the Tribunal had to determine whether the December 1990 transaction constituted a “sale” for the purposes of section 68.2 of the *Excise Tax Act*. In the event the Tribunal found that it was a “sale,” then the Tribunal had to determine whether it had jurisdiction to consider the applicability of the general anti-avoidance rule under section 274 of the *Excise Tax Act*. If the Tribunal found that it did have such jurisdiction, then it had to determine whether the general anti-avoidance rule applied to deny Michelin its refund under section 68.2 of the *Excise Tax Act*.

The Tribunal was of the view that the December 1990 transaction was, in law, fully complete and that the imported tires were legitimately sold by Michelin to Uniroyal Goodrich on December 28, 1990. As such, the December 1990 transaction constituted a legally effective sale for purposes of section 68.2 of the *Excise Tax Act*. More particularly, in the Tribunal’s view, a transaction could still be effectual although it had no business purpose other than a tax purpose. The Tribunal concluded that the December 1990 transaction was not a sham transaction nor was it a bailment. Rather, the Tribunal was of the view that there was a true vendor-purchaser relationship between Michelin and Uniroyal Goodrich. The Tribunal found that the evidence did not support a decision that Michelin and Uniroyal Goodrich were so closely related that they constituted one economic entity and were not capable of giving, freely, a mutual assent.

The Tribunal found that it did have jurisdiction to consider the applicability of the general anti-avoidance rule. More particularly, the Tribunal found that the Minister’s mental process in determining whether an application for refund of FST should be allowed cannot affect a taxpayer’s obligation to remit FST imposed by the *Excise Tax Act*. This obligation is created by the *Excise Tax Act*, not by a notice of determination or assessment. The Tribunal was, therefore, of the view that the Minister was not precluded from raising the general anti-avoidance rule simply because the determination or decision did not indicate that Michelin’s application for a refund was rejected on this basis. The Tribunal was not persuaded that subsection 274(7) of the *Excise Tax Act* created any obligation on the Minister that was any different from his normal obligation to inform the taxpayer of the reason why an application for a refund was being rejected.

Section 274 of the *Excise Tax Act* was made applicable to section 68.2 for transactions which occurred between December 17 and December 31, 1990, by retroactive legislation assented to on June 10, 1993. This was the first time that the Tribunal considered the application of the general anti-avoidance rule under section 274 of the *Excise Tax Act*. Although there was a sale of the imported tires

**Harbour Sales
(Windsor) Limited v.
The Deputy Minister
of National Revenue**

AP-93-322

Decision:
Appeal allowed
(November 4, 1994)

by Michelin to Uniroyal Goodrich, the Tribunal was of the opinion that all of the necessary conditions of section 274 of the *Excise Tax Act* had clearly been met and that the general anti-avoidance rule applied to the circumstances of this case to deny Michelin its refund. The Tribunal was of the view that the December 1990 transaction would clearly have resulted in a tax benefit to Michelin, i.e. it would have obtained a refund of 13.5 percent, instead of a rebate of 8.1 percent, representing a difference of over \$800,000. There was absolutely no *bona fide* business purpose to the December 1990 transaction other than to obtain a tax benefit. As such, the December 1990 transaction was an avoidance transaction. Whether the onus was on Michelin or on the Minister, the Tribunal was of the opinion that the evidence clearly showed that there was a misuse of sections 68.2 and 48 of the *Excise Tax Act* and an abuse of that act as a whole. Accordingly, the appeal was dismissed.

This was an appeal under section 67 of the *Customs Act* from two decisions of the Deputy Minister with respect to the “value for duty” of certain benches and tiles imported into Canada from Taiwan. Whenever goods are imported into Canada, the monetary value of those goods must be determined to allow for the calculation of the applicable duties. The issue in this appeal was whether the Deputy Minister had properly determined the value for duty of the benches and tiles.

The evidence disclosed that Harbour Sales (Windsor) Limited (Harbour Sales) had entered into contracts with two Canadian purchasers, pursuant to which it had agreed to supply one of them with benches and the other with tiles. Harbour Sales also entered into contracts with two Taiwanese manufacturers that agreed to supply the benches and tiles. There was some evidence to suggest that Harbour Sales did not carry out all of the administrative functions associated with the management of both sets of contracts. Many of those functions were carried out by Harbor Sales Company (HSC), a U.S. company. The goods in issue were shipped from Taiwan to Canada, where they were delivered to Harbour Sales’ two Canadian customers. The value for duty of the goods was assessed on the basis of the sale price of the goods from Harbour Sales to its Canadian customers, as opposed to the sale price from the suppliers in Taiwan to Harbour Sales.

Counsel for the Deputy Minister submitted that the relevant provisions of the *Customs Act* provide that value for duty is to be determined on the basis of the price paid for goods, when the goods are sold for export to Canada. In counsel’s submission, for goods to be sold for export to Canada, there must be a purchaser resident in Canada to whom the goods are sold. Counsel argued, on the basis of HSC’s “active” role in managing the contracts, that HSC had actually purchased

the goods from the Taiwanese suppliers and then sold them to the Canadian purchasers. Counsel argued that, even if the Tribunal was satisfied that the goods had been sold to Harbour Sales, Harbour Sales was not a resident of Canada and that, therefore, the sale that was “for export to Canada” was the sale between Harbour Sales and its Canadian customers.

The Tribunal found that the goods were sold by the Taiwanese manufacturers to Harbour Sales. In making this finding, the Tribunal noted that, despite the fact that the contracts had, in part, been administered by HSC, it was Harbour Sales that was legally liable for the payment of the purchase price of the goods, that actually paid for the goods, that was at risk in the event that the goods were lost or damaged in transit and that was legally obliged to deliver the goods to its Canadian purchasers.

The Tribunal also found that the goods had been sold for export to Canada. In that regard, the Tribunal noted that all of the documentation surrounding the sale and export of the goods provided that they were to be shipped directly from Taiwan to Toronto. In the Tribunal’s view, no event or person interrupted the export of the goods from Taiwan to Canada. The Tribunal did not address counsel for the Deputy Minister’s argument regarding Harbour Sales’ residency, as, in the Tribunal’s view, the relevant provisions of the *Customs Act* do not provide a residency requirement, and none could be read into those provisions by implication.

On January 31, 1995, the Federal Court, Trial Division, denied the Deputy Minister’s request for leave to appeal the Tribunal’s decision.

Kelsea Sales & Importing Ltd. v. The Deputy Minister of National Revenue for Customs and Excise

AP-92-367

Decision:
Appeal allowed
(June 9, 1994)

Provincial Wallcoverings Limited v. The Deputy Minister of National Revenue for Customs and Excise

AP-93-150

Decision:
Appeal dismissed
(June 9, 1994)

The Tribunal heard and decided its first two appeals concerning the rules of origin provisions under the *Canada-United States Free Trade Agreement* as implemented in the *Customs Act*, *Customs Tariff*, *Proof of Origin Regulations* and *United States Tariff Rules of Origin Regulations*. In both appeals under section 67 of the *Customs Act*, the Tribunal considered whether the Deputy Minister had correctly determined that goods imported from the United States were not of U.S. origin and were not, therefore, entitled to the benefit of the United States Tariff.

The Tribunal found that, in order for goods to be entitled to the benefit of the United States Tariff, the following conditions under subsection 25.2(6) of the *Customs Tariff* had to be satisfied: (1) proof of origin of the goods is given in accordance with the *Customs Act*; (2) the goods are entitled, in accordance with any regulations made pursuant to subsection 13(2) of the *Customs Tariff*, to the benefit of the United States Tariff; and (3) the goods are shipped directly to Canada, with or without transshipment, from the United States. The Tribunal found that, to satisfy the first condition, an importer claiming the benefit of the United States Tariff had to provide, as proof of origin, an exporter's certificate of the origin of the goods or a declaration of origin, in accordance with the *Proof of Origin Regulations*.

With respect to the second condition, the Tribunal found that, in order to satisfy that condition, an importer had to demonstrate that the imported goods were; (1) wholly obtained or produced in the United States; (2) processed or assembled in the United States so as to be subject to a change in tariff classification from the tariff classification to which they would have been subject prior to processing or assembly and meet other prescribed conditions; or (3) assembled in the United States and classified under the same tariff classification prior to and subsequent to the assembling. The third condition was not at issue in either appeal.

In the first appeal, *Kelsea Sales & Importing Ltd.*, the issue before the Tribunal was whether imported needlecraft kits, consisting of cloth with an imprinted design for embroidery, yarns of different colours, instructions, a needle, a picture of the finished product and a plastic bag containing each kit, were of U.S. origin and were, thus, entitled to the benefit of the United States Tariff. The Tribunal found that the first condition, that Kelsea Sales & Importing Ltd. file an "Exporter's Certificate of Origin" had been satisfied. With regard to the components in the needlecraft kits, the Tribunal found that all but the needle were goods wholly obtained or produced in the United States, as demonstrated by a notarized letter from the president of the manufacturer and exporter of the kits. With respect to the needle, the Tribunal was of the view that the needle had

undergone the necessary tariff classification change in accordance with the *United States Tariff Rules of Origin Regulations*. Finally, the Tribunal found that the operations which the kits had undergone in the United States consisted of more than packaging or combining and that the kits were processed or assembled in the United States and were, therefore, entitled to the benefit of the United States Tariff.

In the second appeal, *Provincial Wallcoverings Limited*, the Tribunal considered whether imported cotton fabrics and wallcoverings composed of ink, paper reels, vinyl coating and printing rollers, were entitled to the benefit of the United States Tariff. The Tribunal found that Provincial Wallcoverings Limited (Provincial Wallcoverings) had filed an "Exporter's Certificate of Origin" and had, therefore, satisfied the first condition. In the "Exporters Certificate of Origin," Provincial Wallcoverings claimed that the imported goods, namely, cotton fabrics and wallcoverings composed of ink, paper reels, vinyl coating and printing rollers, were goods which were entitled to the benefit of the United States Tariff as goods wholly produced or obtained in the United States. The Tribunal was of the view that the letters from the companies which supplied Provincial Wallcoverings with the raw materials to produce the imported goods did not demonstrate that all of the raw materials were wholly obtained or produced in the United States. Accordingly, the Tribunal found that the Deputy Minister had correctly determined that the goods were non-originating and were not entitled to the benefit of the United States Tariff.

Appeal Decisions Rendered Under Section 67 (Formerly Section 47) of the *Customs Act*, Section 81.27 (Formerly Section 51.27) of the *Excise Tax Act* and Section 61 of SIMA Between April 1, 1994, and March 31, 1995

Appeal No.	Appellant	Date of Decision	Decision
<i>Customs Act</i>			
AP-93-019	Teledyne Canada Mining Products	April 12, 1994	Allowed
AP-92-385	Opal Optical Ltd.	April 21, 1994	Allowed
AP-93-107	Ritchie A.L. Younger, M.D.	April 25, 1994	Allowed
AP-89-181 and AP-89-244	Fisher Scientific Limited	May 3, 1994	Allowed
AP-93-035	Garlock of Canada Ltd.	May 3, 1994	Dismissed
AP-93-026	Hospital & Kitchen Equipment Limited	May 6, 1994	Dismissed
AP-93-047	Wilbur-Ellis Company of Canada Limited	May 11, 1994	Dismissed
AP-92-265	Computalog Ltd.	May 12, 1994	Dismissed
AP-92-367	Kelsea Sales & Importing Ltd.	May 26, 1994	Allowed
AP-93-150	Provincial Wallcoverings Limited	June 9, 1994	Dismissed
AP-93-237	Dannycos Trading (Canada) Ltd.	June 16, 1994	Allowed
AP-93-124	McDiarmid Lumber Ltd.	June 21, 1994	Allowed
AP-93-082	Threads of Time - Gloucester Antiques O/B Price-Tompkins Ltd.	June 29, 1994	Allowed
AP-93-063	Walker Exhausts Division of Tenneco Canada Inc.	July 6, 1994	Allowed in part
AP-92-350	Reckitt & Colman Canada Inc. (Formerly Known as Boyle-Midway Ltd.)	July 7, 1994	Dismissed
AP-93-128	Hoover Canada, A Division of MH Canadian Holdings Limited	July 14, 1994	Dismissed
AP-93-241	Tai Telecommunications Accessories	July 25, 1994	Allowed
AP-93-278	Viewmaster (Canada) Inc.	July 25, 1994	Dismissed
AP-93-092	Baxter Corporation	July 26, 1994	Allowed
AP-93-260	Quadra Chemicals Ltd.	July 26, 1994	Dismissed
AP-93-263	World Famous Sales of Canada Inc.	August 31, 1994	Allowed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-93-274 and AP-93-294	Continuous Colour Coat Limited	August 31, 1994	Dismissed
AP-93-271	Allied Colloids (Canada) Inc.	September 8, 1994	Allowed
AP-93-298	Glenn Whitten	September 14, 1994	Dismissed
AP-92-091	SnyderGeneral Canada Inc.	September 19, 1994	Allowed
AP-93-322	Harbour Sales (Windsor) Limited	November 4, 1994	Allowed
AP-94-016 and AP-94-109	Narco Canada Inc., Div. of North American Refractories Co. and North American Refractories Co.	December 7, 1994	Allowed
AP-93-311	Marubeni Canada Ltd.	December 14, 1994	Allowed
AP-93-364	Tilechem Limited	January 17, 1995	Allowed
AP-93-383	Asea Brown Boveri Inc.	January 18, 1995	Dismissed
AP-94-005	Schrader Automotive Inc.	January 24, 1995	Allowed
AP-94-034	Canper Industrial Products Ltd.	January 24, 1995	Dismissed
AP-93-388	Ford New Holland Canada Ltd.	February 3, 1995	Allowed
AP-94-015	Ashland Chemical Canada Ltd.	February 14, 1995	Dismissed
AP-94-035, AP-94-042 and AP-94-165	Mexx Canada Inc.	February 16, 1995	Dismissed
AP-93-353 and AP-93-358	Intercraft Industries of Canada Inc.	March 14, 1995	Dismissed
AP-93-331	Continental Industries O/B R. Solom Co. Ltd.	March 20, 1995	Allowed

Excise Tax Act

AP-92-252	Harry M. Gruenberg, Synoda Co. Reg'd	April 5, 1994	Allowed in part
AP-93-051	De Mers Electric Limited	April 12, 1994	Dismissed
AP-93-106	R.C. Barry and M.A. Barry, D.B.A. Barry's Trading Post	April 12, 1994	Dismissed
AP-92-368	Doran Contractors Limited	April 13, 1994	Allowed in part

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-92-363	Ébénisterie Duramen Inc.	April 18, 1994	Allowed
AP-92-109	Jomitek Inc.	April 19, 1994	Allowed in part
AP-93-071	Cosman International Inc.	April 25, 1994	Dismissed
AP-92-169	M-M Electric - A Division of Rio de Janeiro Holdings Ltd.	April 28, 1994	Dismissed
AP-92-195	Jostens Canada Ltd. and Jostens of Quebec Ltd.	April 28, 1994	Allowed in part
AP-92-369	E & E Seegmiller Limited	April 28, 1994	Dismissed
AP-93-048	Stuart Olson Industrial Contractors Inc.	April 28, 1994	Allowed
AP-92-278	Michael and Arlene Tugwell	May 2, 1994	Dismissed
AP-92-158	Ardel Steel Ltd.	May 5, 1994	Allowed
AP-93-015	Skyline Neon Ltd.	May 6, 1994	Allowed
AP-92-360	North Peace Cultural Society	May 10, 1994	Allowed
AP-93-099	Medi Athleti-K-Inc.	May 13, 1994	Allowed in part
AP-92-375	Palmer Jarvis Advertising	May 17, 1994	Allowed
AP-93-067	Simson-Maxwell	May 17, 1994	Dismissed
AP-93-081	Smed Manufacturing Inc.	May 17, 1994	Allowed
AP-93-002	XTC Industries Ltd.	May 25, 1994	Dismissed
AP-92-140	Frederick Yue-Pang Tsui and Helena Koon-To Tsui	May 26, 1994	Dismissed
AP-92-267	Howe Sound Pulp and Paper Limited	May 27, 1994	Allowed
AP-93-086	Oakwood Radiator Service Limited	June 7, 1994	Dismissed
AP-93-089	Hergert Electric Ltd.	June 7, 1994	Allowed
AP-93-125	All Canadian Awards & Gift Sales Ltd.	June 8, 1994	Allowed in part
AP-93-143	Compagnie de Flottage du St-Maurice Limitée	June 8, 1994	Allowed in part
AP-92-159	B.C. Chemicals Ltd.	June 16, 1994	Allowed in part
AP-93-075	Parkview Superette (1985) Ltd.	June 21, 1994	Dismissed
AP-93-097	Guy Vaillancourt Holdings Inc.	June 21, 1994	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-93-056	Capitol Records - EMI of Canada Limited	June 22, 1994	Dismissed
AP-93-091	696533 Ontario Inc. O/A Bogar - Paterson Heating & Air Conditioning	June 29, 1994	Dismissed
AP-93-108 and AP-93-109	Interface Flooring Systems Inc. and Interface Flooring Systems (Manufacturing) Inc.	July 13, 1994	Allowed
AP-93-279	The Satellite Station	July 15, 1994	Allowed
AP-93-250	Kramer Ltd.	July 21, 1994	Allowed in part
AP-93-285	Color Your World Corp.	August 10, 1994	Dismissed
AP-93-264	Cragg & Cragg Design Group Ltd.	August 15, 1994	Allowed
AP-93-140 and AP-93-142	J P L International Diffusion Inc.	August 31, 1994	Dismissed
AP-93-272	Delcan Corporation	August 31, 1994	Allowed
AP-93-352	George John Kovacs	September 9, 1994	Dismissed
AP-93-254	Barton Tubes Limited	September 20, 1994	Allowed
AP-93-293	Grand Valley Mechanical Ltd.	September 20, 1994	Dismissed
AP-93-365, AP-93-366 and AP-93-367	Sterling Aircraft Products Limited Gregg Mills Mills/Sterling Aerospace Inc.	September 20, 1994	Dismissed
AP-93-101, AP-93-102 and AP-93-103	International Rebuilders Components Inc. Mr. Sparks Auto Electric Service Ltd. Mr. Sparks Auto Electric Ltd.	September 22, 1994	Dismissed
AP-93-345	Orleans Glass Inc.	September 22, 1994	Dismissed
AP-93-386	Timothy Edward Marshall	September 22, 1994	Dismissed
AP-93-289	Gerrard-Ovalstrapping, Division of EII Limited	September 26, 1994	Allowed
AP-93-378	Lucien Turcotte & Fils Inc.	October 5, 1994	Dismissed
AP-93-381	Koné Inc.	October 5, 1994	Allowed
AP-93-363	James George Paling	October 17, 1994	Dismissed
AP-93-304	Cablecor Data Lines Limited	November 2, 1994	Allowed in part
AP-94-017	Direct Appliance Sales Ltd.	November 2, 1994	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-93-257	Teknion Furniture Systems Inc.	November 2, 1994	Allowed
AP-93-127	MH Media Monitoring Limited	November 7, 1994	Dismissed
AP-93-266	Construction Products Inc.	November 8, 1994	Allowed
AP-93-323	Domtar Inc.	November 21, 1994	Allowed
AP-93-348	Montana Electric Inc.	November 24, 1994	Dismissed
AP-93-303	Ryerson Polytechnical Institute	November 24, 1994	Allowed
AP-94-041	Home Hardware Stores Limited	December 13, 1994	Allowed in part
AP-93-320	Technessen Ltd.	December 21, 1994	Dismissed
AP-93-148	Price & Markle Equipment Ltd.	January 4, 1995	Allowed
AP-93-391	Restorite Bedding Canada Ltd.	January 11, 1995	Dismissed
AP-93-380	Healey Motors Limited	February 9, 1995	Dismissed
AP-93-036	Ricky D. Willness	February 27, 1995	Dismissed
AP-92-236	Diane Bernauer T/A Video Quest	February 27, 1995	Dismissed
AP-92-277	Barry Rodko Goldsmiths Ltd.	March 10, 1995	Allowed in part
AP-93-111	Impressions Gallery Inc.	March 14, 1995	Dismissed
AP-93-333	Michelin Tires (Canada) Ltd.	March 22, 1995	Dismissed
AP-94-022	Ventes J.V.F. Inc.	March 31, 1995	Dismissed

Special Import Measures Act

AP-93-055	J.B. Multi-National Trade Inc.	April 28, 1994	Allowed
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CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

Introduction

The CITT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the government or the Minister of Finance.

Tariff-Related Inquiries

Under section 19 of the CITT Act, the Minister of Finance may refer to the Tribunal for inquiry and report “any tariff-related matter, including any matter concerning the international rights or obligations of Canada in connection therewith.”

Textile Reference

Pursuant to a reference from the Minister of Finance dated July 6, 1994, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for production and to make recommendations in respect of those requests to the Minister of Finance.

Procedural Guidelines

As directed by the Minister of Finance, the Tribunal consulted with the Canadian textile and downstream industries and their respective associations in developing procedural guidelines to facilitate the process. As a result of these consultations, the Tribunal issued a notice in the Canada Gazette and published the Textile Reference Guide which includes, among others, the following documents: the transmittal letter and terms of reference from the Minister of Finance; the Textile Reference Guidelines; the schedules of events in 120-day and 60-day investigations; and a summary of the information which will be requested from domestic producers for the purpose of the Tribunal’s investigation.

Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, for production. The textile inputs for which tariff

relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of Schedule I to the *Customs Tariff*.

Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, to company-, textile- and/or end-use-specific tariff provisions. The recommendation could be for either temporary or permanent tariff relief. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.

Investigations

When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties, including industry associations and any appropriate government department or agency, such as Revenue Canada, the Department of Foreign Affairs and International Trade, the Department of Industry and the Department of Finance. The notice is also published in the Canada Gazette.

In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.

To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits or questionnaires. Information is obtained from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of determining whether the tariff relief sought will maximize net economic gains for Canada.

In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.

The procedures developed for the conduct of the Tribunal's investigations envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

Where confidential information is provided to the Tribunal, such information falls within the protection of the CITT Act. Accordingly, the Tribunal will only distribute confidential information to counsel who are acting on behalf of a party and who have filed a declaration and undertaking.

**Recommendations
to the Minister**

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within 60 days from the date of commencement of the investigation. If, as an investigation proceeds, the Tribunal determines that the situation requires the government's early attention, it may make an interim report to the Minister of Finance.

Review Process

Where the Minister of Finance has made a temporary order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal or amendment of the order prior to the expiry of that order. Such a request should be made not less than six months prior to the scheduled expiry of the order.

**Annual Report to the
Minister**

The Tribunal will provide the Minister of Finance with an annual status report on the investigation process and make recommendations for changes to the investigation process that may be appropriate in order to maximize net economic gains for Canada.

**Recommendations
Submitted During the
Last Fiscal Year**

In Request No. TR-94-001, *Canatex Industries (Division of Richelieu Knitting Inc.)*, the Tribunal recommended to the Minister of Finance that the customs duty on importations, from all countries, of 100% nylon, partially oriented filament yarn (POY), greige or solution-dyed, under 50 tex, type 6 or 6.6, be permanently removed. In its report, the Tribunal indicated that the subject yarn is no longer produced in Canada and that imports of this yarn have been duty-free since 1990, when imported from the United States, the principal supplier of the subject yarn to Canada. The primary direct benefits of granting tariff relief was estimated at between \$0.5 and \$1.0 million per annum, if the subject yarn were subject to the MFN rate of duty.

In Request No. TR-94-006, *Western Rim Industries Ltd.*, the Tribunal determined that it did not have jurisdiction to conduct an investigation, as the requester was not a domestic producer as required by the reference from the Minister of Finance.

The following table summarizes the Tribunal's activities during the fiscal year.

Summary of Requests for Tariff Relief Initiated as of March 31, 1995

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-94-001	Canatex Industries (Division of Richelieu Knitting Inc.)	yarn	March 24, 1995	Permanent tariff removal
TR-94-002	Kute-Knit Mfg. Inc.	yarn		
TR-94-004	Woods Canada Limited	fabric		
TR-94-005	Hemisphere Productions Inc.	fabric		
TR-94-007	Woods Canada Limited	fabric		
TR-94-009	Équipement Saguenay (1982) Ltée	fabric		

Note: Gaps in the numbering of requests represent tariff relief requests that were still under consideration by the Tribunal as of March 31, 1995.

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Chapter Ten of NAFTA relates to government procurement. Article 1017 requires each party to NAFTA to establish a bid challenge mechanism to allow suppliers to challenge procurements that have not been carried out in accordance with the requirements of Chapter Ten. Canada fulfilled its obligations under Article 1017 by amending the CITT Act, enacting the *North American Free Trade Agreement Procurement Inquiry Regulations* and amending the Tribunal's Rules of Procedures, all of which came into force on January 1, 1994.

Any potential suppliers who believe that they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts on a designated procurement, may lodge a formal complaint with the Tribunal. A potential supplier with an objection is encouraged to resolve the issue first with the government institution responsible for the procurement. When this process is not successful or a supplier wants to deal directly with the Tribunal, the complainant may ask the Tribunal to consider the case by filing a complaint within the prescribed time limit.

When the Tribunal receives a complaint, it reviews the submission against the criteria for filing. If there are deficiencies, the complainant is given an opportunity to correct these within a specified time limit. Once the complaint meets the criteria for filing, the government institution and all other interested parties are sent a formal notification of the complaint. A copy of the complaint is sent to the government institution. When the Tribunal decides to initiate an inquiry, an official notice of the complaint is published in Government Business Opportunities and the Canada Gazette. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal, unless the government institution certifies that the procurement is urgent or that the delay would be against the public interest.

After receipt of its copy of the complaint, the government institution responsible for the procurement files a report responding to the allegations. The complainant is then sent a copy of the Government Institution Report and has seven days to submit comments. These are forwarded to the government institution and any interveners.

A staff investigation, which can include interviewing individuals and examining files and documents, may be conducted and result in the production of a Staff Investigation Report. This report is circulated to the parties for their comment. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

The Tribunal then makes a determination, which may consist of recommendations to the government institution (such as re-tendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing complainant for filing and proceeding with the bid challenge and/or costs for preparing the bid. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal in its determination are to be implemented to the greatest extent possible.

Summary of Procurement Review Activities

	1993-94*	1994-95
CASES DECIDED WITHOUT A WRITTEN DETERMINATION		
Resolved Between Parties	0	1
Lack of Jurisdiction	6	9
Withdrawn	3	2
Late Filing	2	2
Abandoned During Filing Process	0	1
Lack of Valid Basis	0	3
Subtotal	11	18
CASES DECIDED BY WRITTEN DETERMINATION		
Lack of Valid Basis	0	4
Upheld on Merit	0	1
Subtotal	0	5
IN PROGRESS	1	2
TOTAL	12	25

* Time period from January 1 to March 31, 1994.

Note: Thirty-two complaints were lodged by Canadian suppliers, three by U.S. suppliers and one by a German supplier.

Summary of Decisions

During fiscal year 1994-95, the Tribunal issued five written determinations of its findings and recommendations. Two other cases were in progress at year end. The table at the end of this chapter summarizes these activities, as well as those cases resolved without a written determination.

Enconair Ecological Chambers Inc.

93F664Y-021-0004

A complaint was filed relating to the award of a contract by the Department of Public Works and Government Services for the supply of two on-site plant growth chambers for the Petawawa National Forestry Institute, in Chalk River, Ontario, a constituent of the Department of Natural Resources. The Tribunal determined that the complaint had no valid basis. The Tribunal found that the procedural requirements were met in this instance, as certain specifications were clarified to the complainant, including the meaning of the term "host computer." The chambers that were the subject of the procurement at issue were to communicate with the host computer already in place, or the bidder had to supply its own host computer. The complainant's two proposals were found to be technically non-responsive, a decision which, in the Tribunal's view, was beyond question, given that the complainant's proposals did not respond to the criteria and essential requirements specified in the tender documentation and further clarified by telephone. As to another question raised by the complainant, i.e. the use of an unannounced criterion, the Tribunal was of the view that the subject of remote communication was raised, after bid closing, when the Petawawa National Forestry Institute sought to secure a complete understanding of the complainant's proposals. There was, however, no indication that remote communication via modem was actually a criterion in evaluating the proposals.

Ébenisterie Alfredo Limitée

94N6666-021-0003

A complaint was filed concerning the establishment, by the Department of Public Works and Government Services, of a national individual standing offer for the procurement of modular office furniture, in particular, keyboard arms on computer tables with pull-out shelves, with a light oak or walnut finish. The Tribunal concluded that the complaint had no valid basis. The Tribunal was of the opinion that specifications communicated on request to one of the bidders were available to all bidders, on request, and that one bidder did not receive any information relating to the keyboard arm prior to bid closing that gave it an advantage over the complainant and/or that had the effect of precluding competition. The Tribunal was not convinced that the contract had been awarded on the basis of requirements that were not specified in the tender documentation.

**Enconair Ecological
Chambers Inc.**

94N6601-021-0005

A complaint was filed concerning the award, by the Department of Public Works and Government Services (the Department), of a contract for the supply and installation of two environmental growth rooms, including retrofitting, cabling and upgrades for existing equipment, for the Swift Current Research Station (the Research Station) in Saskatchewan, a constituent of the Department of Agriculture. The Tribunal determined that the complaint had no valid basis. The Tribunal concluded that a state of urgency had been duly substantiated. The Tribunal also noted that, although the complainant argued that the development of a state of urgency might have been avoided had the Research Station and the Department acted with more diligence, the complainant never disputed that a state of urgency existed at the time that the notice of proposed procurement was published. The Tribunal considered that the offer submitted by the complainant had been properly declared non-compliant by the Department for failing to meet seven mandatory requirements clearly spelled out in the Request For Proposal (RFP). In effect, the complainant chose not to provide any information or relevant documents in response to these seven requirements. In these circumstances, it was clear that no subjective judgment or discretion could have been applied, since there was no information which could be weighed or assessed by the Department and the Research Station. Therefore, the decision was objective and dealt strictly with determining the absence or presence of certain required information. There was also a question as to whether or not the RFP was designed, on purpose or otherwise, in such a way as to prevent open competition. After having reviewed all the requirements of the RFP in light of the circumstances of the present case, the Tribunal was of the view that such requirements, taken separately or together, were entirely justifiable. As they could reasonably have been considered as essential to ensure the fulfillment of the contract in question, they did not constitute a barrier to open competition.

**Pamico Energy
Canada, A Division of
392826 Alberta Ltd.**

94N66W-021-0010

A complaint was filed concerning the issuance, by the Department of Public Works and Government Services (the Department), of a standing offer for the supply of 14,960,000 L of Grade F-40 aviation fuel to be delivered by tank wagon to CFB Comox of the Department of National Defence (DND) in British Columbia. The Tribunal determined that the complaint had no valid basis. In the opinion of the Tribunal, requirements for quality control contained in the solicitation documents were standard requirements when procuring this kind of fuel for DND and were clearly stated. The Department went to some lengths to explain the requirements to the complainant and provided it with a number of chances to meet the specifications, including the opportunity to amend its quality program manual. The Tribunal was of the view that the Department properly determined that the complainant was not fully capable of undertaking the contract.

A complaint was filed concerning the failure of the Department of Public Works and Government Services (the Department) to award the complainant a contract for the supply of 35 borescopes for the Department of National Defence in Montréal, Quebec. The Tribunal determined that the complaint was valid and recommended that the Department award the contract to the complainant at the higher price. The Tribunal was of the view that the Department was obligated, unless it decided that it was not in the public interest, to award the contract to the supplier whose tender was determined to be the most advantageous in terms of the specific evaluation criteria set out in the tender documentation. The Department was not authorized to initiate negotiations, since the limited circumstances under which negotiations may be conducted as provided by Article 1014(1) of NAFTA, did not exist in this case. The Tribunal was not persuaded by the evidence that the Department's actions supported a finding that an examination of the public interest was conducted in deciding to re-tender the procurement at issue.

Summary of Procurement Complaints Filed Between January 1, 1994, and March 31, 1995

(Jurisdiction for procurement review was assumed by the Tribunal on January 1, 1994. This table reflects the caseload since that time. Previous annual reports to Parliament were based on the calendar year.)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
93F66W-021-0001	American Aviation Parts & Service (Canada) Ltd.	January 3, 1994	Not accepted for inquiry/ Excluded class of goods
93F66T-021-0002	Steel and Engine Products Limited	January 25, 1994	Not accepted for inquiry/Excluded entity
93F6633-021-0003	Amdahl Canada Limited	January 25, 1994	Not accepted for inquiry/Value above the upper threshold
93F664Y-021-0004	Enconair Ecological Chambers Inc.	March 3, 1994	Decision issued on May 27, 1994 Dismissed/No valid basis
93F66M-021-0005	Sony of Canada Ltd.	March 17, 1994	Not accepted for inquiry/Value above the upper threshold
93N66M-021-0006	Cabletron Systems Inc.	March 18, 1994	Withdrawn by complainant
93N6601-021-0007	Enconair Ecological Chambers Inc.	March 17, 1994	Not accepted for inquiry/Late filing
93N669F-238-0008	Veda Incorporated	March 18, 1994	Not accepted for inquiry/Excluded class (services)
93N6601-021-0009	Cabletron Systems Inc.	March 23, 1994	Withdrawn by complainant
93N6635-021-0010	Cabletron Systems Inc.	March 23, 1994	Withdrawn by complainant
93N6666-021-0011	Cabletron Systems Inc.	March 23, 1994	Not accepted for inquiry/Late filing
93F66W-021-0012	Wackid Radio	March 25, 1994	Not accepted for inquiry/Excluded class of goods and value above the upper threshold

Summary of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
94F66W-021-0001	Marathon Management Company	May 27, 1994	Resolved between parties Withdrawn/Dismissed July 11, 1994
94N6638-021-0002	The Table Shop Ltd.	June 6, 1994	Not accepted for inquiry/Late filing
94N6666-021-0003	Ébenisterie Alfredo Limitée	June 8, 1994	Decision issued on September 14, 1994 Dismissed/No valid basis
94N6608-148-0004	BR-Design	August 4, 1994	Not accepted for inquiry/Not a potential supplier
94N6601-021-0005	Enconair Ecological Chambers Inc.	August 24, 1994	Decision issued on November 22, 1994 Dismissed/No valid basis
94N6666-021-0006	Alphaform Exhibit Systems	August 30, 1994	Not accepted for inquiry/Excluded class (services)
94N6632-021-0007	KOM Inc.	September 9, 1994	Not accepted for inquiry/No reasonable indication of a breach
94N66E-021-0008	Legendyk et Cie Limitée	September 22, 1994	Not accepted for inquiry/Not a designated contract
94N66E-021-0009	Legendyk et Cie Limitée	September 22, 1994	Not accepted for inquiry/Not a designated contract
94N66W-021-0010	Pamico Energy Canada, A Division of 392826 Alberta Ltd.	September 23, 1994	Decision issued on December 5, 1994 Dismissed/No valid basis
94N66W-021-0011	W.J. Keating, Division of Dibblee Tools Ltd.	September 30, 1994	Withdrawn by complainant
94N66H-021-0012	Unicam Analytical Inc.	October 14, 1994	Withdrawn by complainant

Summary of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
94F66W-021-0013	Impact Cases Inc.	October 27, 1994	Not accepted for inquiry/Late filing
94N66W-021-0014	Hewlett Packard (Canada) Ltd.	November 2, 1994	Not accepted for inquiry/No reasonable indication of a breach
94N66T-021-0015	Hamworthy Canada Limited	November 18, 1994	Not accepted for inquiry/Excluded class (services)
94N66W-021-0016	Dowty Aerospace Landing Gear	December 2, 1994	Not accepted for inquiry/Not a designated contract
94N66W-021-0017	Tactical Technologies Inc.	December 12, 1994	Not accepted for inquiry/Excluded class (services)
94N66E-021-0018	Blairs Mechanical Inc.	January 3, 1995	Not accepted for inquiry/Not a designated contract
94N66W-021-0019	Carsen Group Inc.	January 4, 1995	Decision issued March 22, 1995 Complaint valid/Recommend award of contract to complainant
94N66T-021-0020	Martin Marietta Canada Ltd.	January 16, 1995	In progress
94N66T-238-0021	Booz•Allen & Hamilton Inc.	January 20, 1995	Abandoned during filing process
94N66W-021-0022	Carsen Group Inc.	February 8, 1995	Not accepted for inquiry/No reasonable indication of a breach
94N6631-238-0023	Cabletron Systems Inc.	February 17, 1995	Not accepted for inquiry/Not a potential supplier on a designated contract

CHAPTER VII

USE OF ANTI-DUMPING AND COUNTERVAILING MEASURES

The Tribunal's 1993-94 Annual Report contained a summary of a paper prepared by the Research Branch entitled The Import Coverage of Tribunal Injury Findings for the period 1980-92. This year, the Tribunal provides an update of Canada's use of anti-dumping measures for the years from 1988 to 1993 and also describes the international use of anti-dumping and countervailing measures. More details of the findings are available in a staff paper entitled Canadian and International Use of Anti-Dumping and Countervailing Measures.

During the 1988-93 period, there were 78 injury findings in force in Canada, involving 176 separate actions against imports from 34 nations.

Canada's Use of Anti-Dumping Measures

Canadian Anti-Dumping Measures, 1988-93

Year ²	Actions ¹			Findings ¹
	Added	Expired/ Rescinded	In Place (Dec. 31)	In Place (Dec. 31)
1988	3	22	135	60
1989	1	14	122	55
1990	10	59	73	35
1991	12	17	68	33
1992	4	6	66	32
1993	15	0	81	36

1. Actions are measured on a country-specific basis. Findings include a number of actions on the same product. For example, the Tribunal finding in Inquiry No. NQ-89-003, *Women's Footwear*, represents six actions: one each for Brazil, the People's Republic of China, Poland, Romania, Taiwan and Yugoslavia.

2. Counting convention: the first year of a measure is the year of the preliminary determination, the last is the year prior to the year in which the measure was rescinded or expired.

Source: Tribunal Research Data Base.

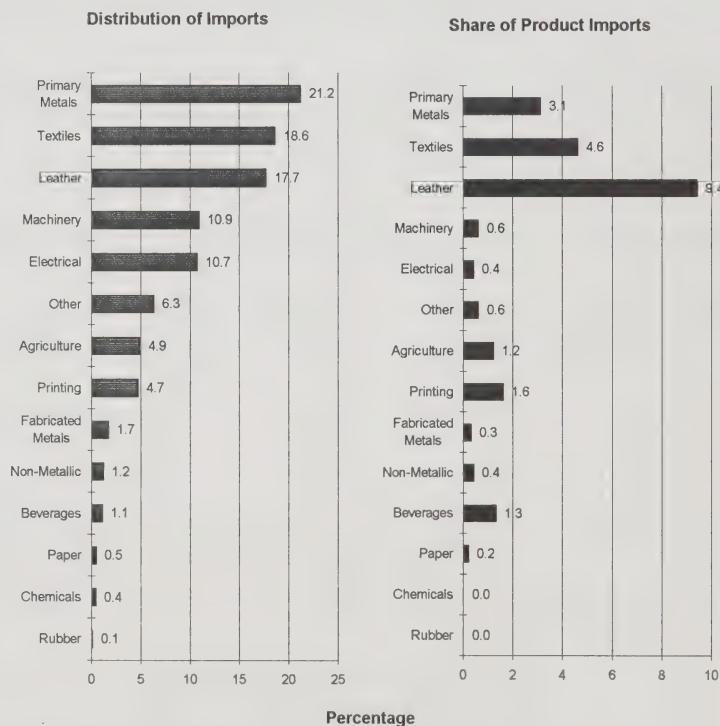
There has been a decrease in the number of anti-dumping measures in place in Canada since the late 1980s. The largest reduction occurred in 1990, as the Tribunal completed reviews of cases that had been "grandfathered" or extended for up to five years with the introduction of SIMA on December 1, 1984.

Anti-Dumping Measures, by Product

The cumulative value of imports affected by anti-dumping measures during the period 1988-93 amounted to approximately \$4.4 billion. The annual value ranged from a high in 1989 of \$1 billion to a low of \$0.5 billion in 1990; it rose to \$0.9 billion in 1993.

Five product groups accounted for 79.1 percent of the total value of imports affected by anti-dumping measures during the period 1988-93. Primary metals, textiles and leather and allied products were the product groups which ranked top three with respect to share of total imports affected by anti-dumping measures during the period.

FIGURE 1
Canadian Imports Affected by Anti-Dumping Measures, by Product, 1988-93



Note: "Distribution" percentages total 100 percent of all imports affected.
"Shares" are percentages of total imports for the specified product group.

Source: Tribunal Research Branch Data Base.

**Percentage of
Canadian Imports
Affected by Anti-
Dumping
Measures**

Primary metals accounted for the largest proportion of total imports affected, amounting to \$930 million for the six-year period. In 1993, \$163 million in imports were affected by rulings. On average, for the 1988-93 period, 3.1 percent of total imports of primary metal products were covered by anti-dumping measures.

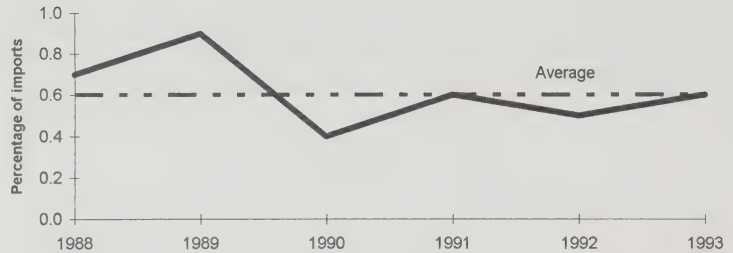
Textiles ranked second for the six-year period, with a value of affected imports of approximately \$815 million. Most of this value reflects the application of duties on imports of carpets starting in 1991. In 1993, textiles had the highest value of imports affected by anti-dumping measures, at \$266 million. On average, for the 1988-93 period, 4.6 percent of textile imports were covered by anti-dumping measures.

Leather and allied products ranked third with imports affected by anti-dumping measures valued at \$776 million for the six-year period. In 1993, \$175 million in imports were affected or 11.9 percent of leather and allied product imports. In percentage terms, this represented the largest proportion of imports of any product group affected. On average, for the 1988-93 period, 9.4 percent of leather and allied product imports were covered by anti-dumping measures.

Over the period 1988-93, an average of 0.6 percent of manufactured and agricultural imports were affected by anti-dumping measures. The proportion of manufactured and agricultural imports covered by anti-dumping measures peaked in 1989 at about 0.9 percent. The percentage of imports affected then declined to its lowest point in 1990, at 0.4 percent. By 1993, the percentage of imports affected by anti-dumping measures reached the six-year average of 0.6 percent.

FIGURE 2

**Percentage of Total Imports Affected by
Anti-Dumping Measures, 1988-93**



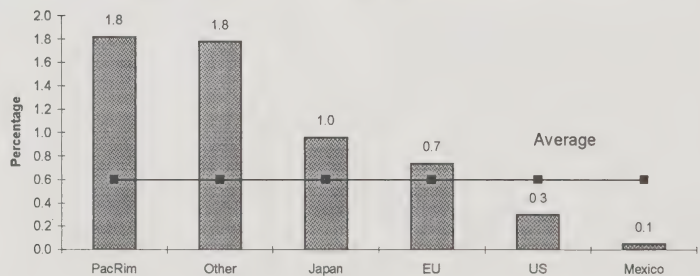
Note: Total imports of manufactured and agricultural goods only.

Source: Tribunal Research Branch Data Base.

The share of imports affected by anti-dumping measures varied significantly from region to region. For example, imports from the United States affected by anti-dumping measures represented only 0.3 percent of U.S. imports into Canada. Imports from the Pacific Rim and other countries affected by anti-dumping measures each amounted to approximately 1.8 percent of total imports from those regions.

FIGURE 3

Percentage of Imports Affected by Region, 1988-93



Source: Tribunal Research Branch Data Base.

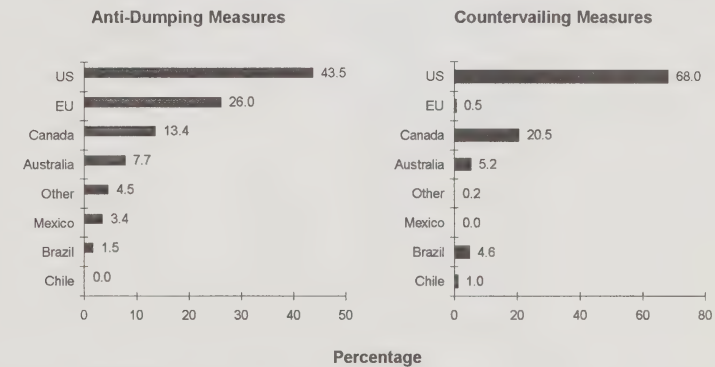
A Comparison of Canadian and International Use of Anti-Dumping and Countervailing Measures

Measures Initiated by GATT Signatories

Canada is among five major jurisdictions that have extensively used the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade* (the GATT Anti-Dumping Code). The other four are the United States, the European Union (the EU), Australia and Mexico. There were 458 anti-dumping measures reported to be in force in 1990 in all GATT signatory countries. This number increased to 704 in 1993. The five major users of the GATT Anti-Dumping Code accounted for 94 percent of all measures in force during the period 1990-93. The remaining 6 percent of the actions were initiated by New Zealand, Brazil, Finland, the Republic of Korea, Columbia, Sweden and Japan.

The United States has been the major jurisdiction using the GATT Subsidies Code, with 68.0 percent of all countervailing measures in force during the period 1990-93. The second largest user was Canada with 20.5 percent, followed by Australia with 5.2 percent of countervailing measures in force. There were 126 countervailing measures reported to be in force in 1990 in all GATT signatory countries. This increased to 179 measures in 1993. The vast majority of this increase was attributable to an increase in actions initiated by the United States and Australia.

FIGURE 4
Percent Share of Measures in Force, by GATT Signatories, 1990-93



Note: Measures for each country are reported as a percentage of total measures in force as of December 31 of each year. They include both the application of duties and undertakings.

Source: GATT semi-annual reports and published reports by national authorities.

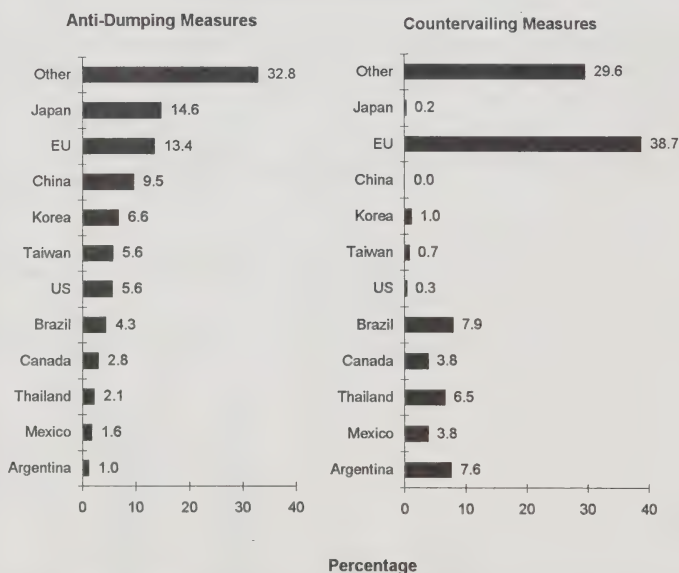
Measures Directed at Exporting Countries

Over 55 percent of all anti-dumping measures reported to be in force were directed at Japan, the EU, the People's Republic of China, the Republic of Korea, Taiwan and the United States. Actions directed at exports from Canada accounted for 2.8 percent of all actions by GATT signatories.

The major jurisdictions subject to countervailing measures were the EU, Brazil, Argentina, Thailand, Canada and Mexico. In total, these six jurisdictions were subject to 68.3 percent of the countervailing measures in force during the period.

FIGURE 5

Percent Share of Measures Directed at Exporting Countries, 1990-93



Note: Measures directed at each country are reported as a percentage of total measures in force.

Source: GATT semi-annual reports and published reports by national authorities.

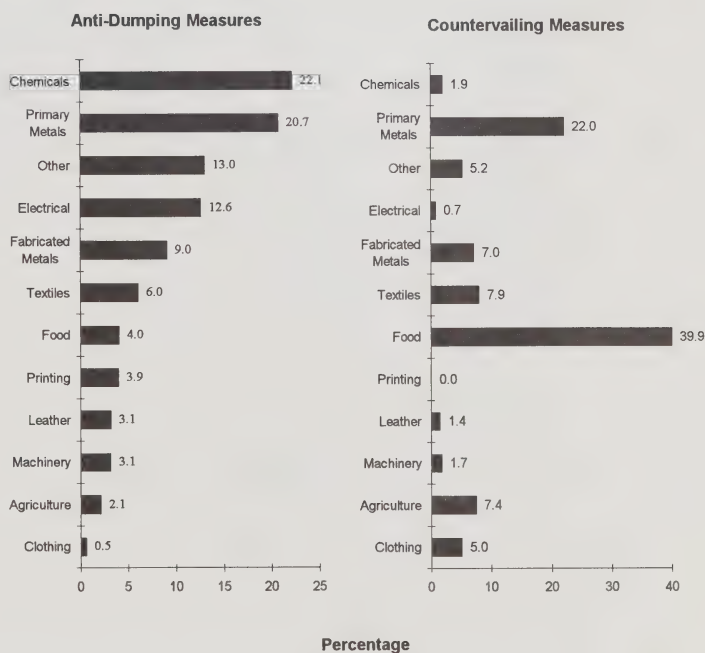
Measures in Force, by Product

Figure 6 shows the percent share of all anti-dumping and countervailing measures in force, by product, for the period 1990-93. The chemical and primary metal product sectors have been affected most by anti-dumping measures, representing 22.1 and 20.7 percent, respectively, of all anti-dumping measures in force over the period 1990-93. Electrical products ranked third with 12.6 percent, followed by fabricated metals with 9.0 percent.

With respect to countervailing measures, food products were most affected, representing 39.9 percent of the measures in force. Primary metals ranked second with 22.0 percent, followed by textiles with 7.9 percent and agricultural and related services with 7.4 percent.

FIGURE 6

Percent Share of Measures in Force, by Product, 1990-93



Source: GATT semi-annual reports and published reports by national authorities.

**Anti-Dumping,
Countervailing and
Other Import
Measures**

Most GATT signatories rely principally on anti-dumping or countervailing duties when they take action against dumped or subsidized imports. The EU is an exception because a large proportion of its measures are in the form of price undertakings.

Anti-dumping and countervailing measures are not the only type of measures used by GATT signatories against imports. For example, imports into some countries are subject to safeguard measures under Article XIX of GATT. Many industrialized countries have voluntary restraint agreements in place against clothing and textiles in conformity with the *GATT Arrangement Regarding International Trade in Textiles* (Multi-Fibre Arrangement). Exporters in many countries have also agreed to voluntary restraint measures on certain sales in a number of GATT markets.

PUBLICATIONS

June 1994

Annual Report for the Fiscal Year Ending March 31, 1994

Bulletin

Vol. 6, Nos. 1 - 4

January 1994

Procurement Review Process — A Descriptive Guide

September 1994

Textile Reference Guide

February 1995

Public Interest Guidelines

Pamphlets

A series of pamphlets designed to inform the public of the work of the Tribunal are available. Pamphlets in the series include:

- Introduction to the Canadian International Trade Tribunal
- Appeals from Customs and Excise Decisions
- Dumping and Subsidizing Injury Inquiries
- Import Safeguard Complaints by Domestic Producers
- Import Safeguard Complaints Concerning the General Preferential Tariff (GPT) or CARIBCAN
- General Inquiries into Economic, Trade and Tariff Matters

Publications can be obtained through the Tribunal by contacting the Secretary, Canadian International Trade Tribunal, Standard Life Centre, 333 Laurier Avenue West, Ottawa, Ontario K1A 0G7 (613) 993-3595.

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CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



ANNUAL REPORT

1995-96

FOR THE FISCAL YEAR ENDING
MARCH 31, 1996

June 1996

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 1996**

**Canadian
International
Trade Tribunal**



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CHAIRMAN

PRÉSIDENT

June 28, 1996

The Honourable Paul M. Martin, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 1996.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Eyton'.

Anthony T. Eyton

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FIGURE

Number of Measures in Force by
GATT Signatories, 1990-94

CHAPTER I

TRIBUNAL HIGHLIGHTS 1995-96

Appointment of a New Member

On July 1, 1995, Ms. Anita Szlazak was appointed Member of the Canadian International Trade Tribunal (the Tribunal). Prior to her appointment, she held various senior positions with the Department of Communications, the Public Service Commission of Canada, the Treasury Board of Canada and the Department of the Environment.

Dumping and Subsidizing Injury Inquiries and Reviews

The Tribunal initiated five injury inquiries in fiscal year 1995-96. In two of these inquiries, the question of public interest was raised, and the Tribunal was of the view that consideration of the public interest question was warranted in one of the inquiries. This matter was still in progress as of March 31, 1996. As of the end of the fiscal year, findings had been issued in two inquiries.

The Tribunal also initiated three reviews of earlier injury findings. It issued five decisions, all of which related to reviews that were still in progress at the end of fiscal year 1994-95.

Appeals of Decisions of the Department of National Revenue

The Tribunal issued decisions on 76 appeals from decisions of the Department of National Revenue (Revenue Canada) made under the *Customs Act*, the *Excise Tax Act*, the *Special Import Measures Act* and the *Softwood Lumber Products Export Charge Act*.

The *Canadian International Trade Tribunal Regulations* (the CITT Regulations) were amended to provide the Chairman of the Tribunal with the discretion to appoint a single member in respect of appeals of Revenue Canada decisions under the *Customs Act* and some provisions of the *Excise Tax Act*. The first appeals to be heard by a single member took place in March 1996.

The Tribunal also held its first hearings by way of videoconferencing as a substitute to regional hearings in 1995-96. Due to their success, the Tribunal will expand its use of videoconferencing in fiscal year 1996-97.

Trade and Tariff References

Pursuant to a reference from the Minister of Finance dated July 6, 1994, the Tribunal was directed, under section 19 of the *Canadian International Trade Tribunal Act* (the CITT Act), to investigate requests from domestic producers for

tariff relief on imported textile inputs and to make recommendations in respect of those requests to the Minister of Finance. During fiscal year 1995-96, the Tribunal received 66 requests for tariff relief.

As per the terms of reference, the Tribunal submitted its first annual status report on the investigation process to the Minister of Finance on November 30, 1995, following consultations with its stakeholders.

Bid Challenge Authority

The Tribunal provides an opportunity for redress for potential suppliers concerned about the propriety of the procurement process relative to contracts covered by NAFTA.

Effective July 1, 1995, Chapter Five (Procurement) of the *Agreement on Internal Trade* (the AIT) came into force. The Tribunal has been given jurisdiction, by regulation, to receive, inquire into and decide bid challenges arising from the AIT.

On January 1, 1996, the Tribunal was identified as the bid challenge authority with regard to the implementation of the World Trade Organization (WTO) *Agreement on Government Procurement*.

Tribunal's Rules of Procedure

The Tribunal has undertaken a review of the *Canadian International Trade Tribunal Rules* (Tribunal's Rules of Procedure) with a view toward amending and augmenting its rules, where necessary, to make them more efficient and to reflect technological innovations that may have an impact on the Tribunal's procedures. The review is also taking into account recent legislative amendments, including those implementing the *North American Free Trade Agreement* (NAFTA), the *Agreement Establishing the World Trade Organization* (the WTO Agreement) and the AIT.

Bulletin Board Service and Factsline System

In order to allow interested parties to obtain Tribunal publications (i.e. appeal decisions, notices, findings and statements of reasons, procurement determinations and textile recommendations) in a more timely and convenient manner, the Tribunal announced, on June 30, 1995, the establishment of an electronic bulletin board service and of the Factsline system.

**Inquiry Process
Under the *Special
Import Measures
Act***

The Tribunal is carrying out a review of its inquiry process under the *Special Import Measures Act* (SIMA). This review was prompted by case experience over the past few years which revealed a number of concerns about how its inquiry process was evolving.

**Consultations
with Stakeholders**

In 1995-96, the Tribunal initiated consultations with its stakeholders on a number of issues. These include: the SIMA inquiry process, the Tribunal's Rules of Procedure and the textile reference.

Tribunal's Caseload in Fiscal Year 1995-96

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated	Cases Outstanding (March 31, 1996)
SIMA ACTIVITIES						
Injury Inquiries	-	5	5	2	-	3
Injury Reviews	5	3	8	5	-	3
Notices of Expiry	-	4	4	4	-	-
References (Advice)	1	3	4	4	-	-
APPEALS						
<i>Customs Act</i>	245	237	482	39	65	378
<i>Excise Tax Act</i>	483	54	537	32	88	417
SIMA	119	18	137	4	24	109
<i>Softwood Lumber Products Export Charge Act</i>	<u>1</u>	<u>-</u>	<u>1</u>	<u>1</u>	<u>-</u>	<u>-</u>
Total	848¹	309	1157	76	177	904
TEXTILE REFERENCE						
Requests for Tariff Relief	19	67 ²	86	24 ³	4	58
PROCUREMENT REVIEW ACTIVITIES						
Complaints (NAFTA)	2	40	42	6	28	8

1. Many of these cases were being held in abeyance, upon request of the parties, pending decisions by the Federal Court of Canada or the Tribunal on similar issues.

2. Includes the reference from the Minister of Finance (TR-94-002A).

3. The Tribunal actually issued 21 reports to the Minister of Finance which related to 24 requests for tariff relief.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the CIIT Act, the CIIT Regulations, the Tribunal's Rules of Procedure, SIMA, the *Customs Act* and the *Excise Tax Act*.

Mandate

The Tribunal's mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry;
- hear appeals of Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance;
- conduct inquiries into complaints by potential suppliers concerning procurement by the federal government that is covered by NAFTA, the AIT and the *WTO Agreement on Government Procurement*;
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations.

Method of Operations

In carrying out most of its responsibilities, the Tribunal conducts hearings that are open to the public. These are normally held in Ottawa, Ontario, the location of the Tribunal's offices, although hearings may also be held elsewhere in Canada. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, conducted generally by a panel of three members, should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information, even when it is commercially confidential. The CITT Act contains provisions that strictly control access to confidential information.

The Tribunal's decisions may be reviewed by or appealed to, as appropriate, the Federal Court of Canada and, ultimately, the Supreme Court of Canada, or a binational panel under NAFTA, in the case of a decision affecting U.S. and/or Mexican interests. Governments that are members of the WTO may appeal the Tribunal's decisions to a dispute settlement panel under the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.

Membership

The Tribunal may be composed of nine full-time members, including a Chairman and two Vice-Chairmen, who are appointed by the Governor in Council for a term of up to five years. A maximum of five additional members may be temporarily appointed. The Chairman is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently 7 in number, are supported by a permanent staff of 87 people. Its principal officers are the Executive Director, Research, responsible for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; the Secretary, responsible for administration, relations with the public, dealings with other government departments and other governments, and the court registrar functions of the Tribunal; the General Counsel, responsible for the provision of legal services to the Tribunal; and the Director of the Procurement Review Division, responsible for the investigation of complaints by potential suppliers concerning any aspect of the procurement process.

Organization

CHAIRMAN

Anthony T. Eyton

VICE-CHAIRMEN

Arthur B. Trudeau

Raynald Guay

MEMBERS

Robert C. Coates, Q.C.

Desmond Hallissey

Lyle M. Russell

Anita Szlazak

SECRETARIAT

Secretary

Michel P. Granger

RESEARCH BRANCH

Executive Director of Research

Ronald W. Erdmann

PROCUREMENT REVIEW DIVISION

Director

Jean Archambault

LEGAL SERVICES BRANCH

General Counsel

Gerry Stobo

**Impact of the AIT
on Tribunal
Activities**

Effective July 1, 1995, the Tribunal was given the jurisdiction to review bid challenges for federal government procurements covered by the AIT. Coverage includes contracts by specific government entities and Crown corporations for goods with a value equal to or greater than \$25,000 and for services (including construction services contracts) with a value equal to or greater than \$100,000.

For the Tribunal, this new jurisdiction will likely mean more procurement review cases, since considerably more federal government contract transactions will be covered by the bid challenge mechanism. In addition, many of the exceptions or exemptions that apply to NAFTA do not apply to the AIT. The procedures for procurements under the AIT are not as detailed as those under NAFTA.

**Impact of the
WTO Agreement
on Government
Procurement on
Tribunal Activities**

Effective January 1, 1996, the *WTO Agreement on Government Procurement*, as found in Annex 4 of the WTO Agreement, replaced the *GATT Agreement on Government Procurement*. The new agreement requires each signatory to establish a bid challenge mechanism for covered procurements. The Tribunal was given this jurisdiction for Canada. The coverage for most government entities includes contracts for goods and services with a value equal to or greater than \$259,500 and for construction services contracts with a value equal to or greater than \$9.9 million. For a small number of "government enterprises," the monetary threshold applicable to procurements for goods and services (excluding construction services contracts) is \$708,800.

The impact on the Tribunal's total procurement review caseload will not likely be significant, since many of the procurements that are covered by this agreement will already be covered by the bid challenge mechanism of NAFTA. The impact of the new agreement on the Tribunal will likely come in the form of logistic complexity of cases, since complaints may originate in any of the signatory countries.

Legislative Mandate of the Tribunal

Section	Authority
CITT Act	
18	Inquiries on Economic, Trade or Commercial Interests of Canada by Reference from the Governor in Council
19	Inquiries Into Tariff-Related Matters by Reference from the Minister of Finance
19.01	Safeguard Inquiries Concerning Goods Imported from the United States and Mexico
19.02	Mid-Term Reviews of Safeguard Measures and Report
20	Safeguard Inquiries Concerning Goods Imported Into Canada and Inquiries Into the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
23(1.01) and (1.02)	Safeguard Complaints by Domestic Producers Concerning Goods Imported from the United States and Mexico
30.08 and 30.09	Extension Inquiries of Safeguard Measures and Report
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts
SIMA (Anti-Dumping and Countervailing Duties)	
33, 34, 35 and 37	Advice to Deputy Minister
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
44	Recommendation of Inquiry (on Remand from the Federal Court of Canada or a Binational Panel)
45	Advice on Public Interest Considerations
61	Appeals of Re-Determinations of the Deputy Minister Made Pursuant to Section 59 Concerning Whether Imported Goods are Goods of the Same Description as Goods to which a Tribunal Finding Applies, Normal Values and Export Prices or Subsidies
76	Reviews of Findings of Injury Initiated by the Tribunal or at the Request of the Deputy Minister or Other Interested Persons
76.1	Reviews of Findings of Injury Initiated at the Request of the Minister of Finance
89	Rulings on Who is the Importer

Legislative Mandate of the Tribunal (cont'd)

Section	Authority
---------	-----------

Customs Act

67	Appeals of Decisions of the Deputy Minister Concerning Value for Duty and Origin and Classification of Imported Goods
68	New Hearings on Remand from the Federal Court of Canada
70	References of the Deputy Minister Relating to the Tariff Classification or Value for Duty of Goods

Excise Tax Act

81.19, 81.21, 81.22, 81.23 and 81.33	Appeals of Assessments and Determinations of the Minister of National Revenue
81.32	Requests for Extension of Time for Objection or Appeal

Softwood Lumber Products Export Charge Act

18	Appeals of Assessments and Determinations of the Minister of National Revenue
----	---

Energy Administration Act

13	Declarations Concerning the Amount of Oil Export Charge
----	---

CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

Inquiries

Under SIMA, Canadian producers may have access to measures to offset certain forms of unfair and injurious competition from goods exported to Canada:

- 1) at prices lower than sales in the home market or lower than the cost of production (dumping), or
- 2) that have benefited from certain types of government grants or other assistance (subsidizing).

The determination of dumping and subsidizing is the responsibility of Revenue Canada, while the determination of whether such dumping or subsidizing has caused “material injury” or “retardation” or is threatening to cause material injury to a domestic industry is the Tribunal’s responsibility.

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Deputy Minister of National Revenue (the Deputy Minister). The Tribunal commences its inquiry at the stage of the issuance of a preliminary determination of dumping or subsidizing by the Deputy Minister. Revenue Canada begins levying provisional duties with the issuance of the preliminary determination.

In conducting its inquiries and arriving at its decisions, the Tribunal tries to ensure that all interested parties are made aware of the inquiry through the issuance of a notice that is published in the Canada Gazette and forwarded to all known interested parties. It also requests information from interested parties, receives representations and holds public hearings. Parties participating in these proceedings may conduct their own cases or be represented by counsel.

The Tribunal staff carries out extensive research for each inquiry to serve the Tribunal’s need for relevant information. This includes sending out questionnaires to manufacturers, importers and purchasers. The data that emerge from the questionnaire responses form the basis of staff reports that focus on the factors to be examined by the Tribunal in arriving at decisions regarding material injury or retardation or threat of material injury to a domestic industry. These reports become an integral part of the case record and are made available to counsel and

**Inquiries
Completed
in 1995-96**

participants in inquiries. Information that is confidential or business-sensitive in nature is protected in accordance with provisions of the CIIT Act. Only counsel who have filed declarations and undertakings may have access to such confidential information.

The CIIT Regulations prescribe factors that may be considered in the Tribunal's determination of whether the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. These factors include, among others, the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on prices and the impact of the dumped or subsidized goods on production, sales, market shares, profits, employment and utilization of production capacity.

At the public hearing, the domestic producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused material injury or retardation or that it is threatening to cause material injury to a domestic industry. The domestic producers' case is usually challenged by importers and, sometimes, by exporters. After cross-examination and examination by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. Parties may also appear seeking exclusions from the finding, should the Tribunal make a finding of material injury or retardation or threat of material injury to a domestic industry. In many cases, the Tribunal calls witnesses who are knowledgeable about the industry and market in question.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Deputy Minister. The Tribunal has an additional 15 days to issue a statement of reasons explaining its finding (section 43 of SIMA). A Tribunal finding of material injury or retardation or threat of material injury to a domestic industry results in the imposition of anti-dumping or countervailing duties by Revenue Canada.

The Tribunal completed two inquiries under section 42 of SIMA in fiscal year 1995-96. They are listed in Table 1. Inquiry No. NQ-95-001 dealt with caps, lids and jars, which are consumer products. Inquiry No. NQ-95-002 dealt with refined sugar, which is purchased by both consumers and industrial users that use it as an input in the production of other food products. The Canadian market for caps, lids and jars had a value of \$15 million in 1994 and, for refined sugar, a value of \$750 million.

Caps, Lids and Jars

NQ-95-001

The Tribunal found that dumped imports from the United States had caused material injury to the domestic producers of caps, lids and jars. This injury had primarily been in the form of lost production, sales and market share, price suppression and reduced profitability due to lost revenues.

This was the first inquiry to proceed under SIMA, as amended by the *World Trade Organization Agreement Implementation Act*. The Tribunal concluded that, as a result of the amendments to SIMA, in making a finding under subsection 43(1) of SIMA in respect of an inquiry under section 42, it is directed to consider whether the domestic industry either has suffered injury or is threatened with injury. In other words, injury and threat of injury are distinct findings, and the Tribunal does not need to make a finding relating to both under subsection 43(1) of SIMA unless it first makes a finding of no injury.

Refined Sugar

NQ-95-002

Although the Tribunal was convinced that dumped imports of refined sugar from the United States, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom and subsidized imports from the European Union had been the primary cause of the decline in refining margins of the domestic industry, it concluded that the margin suppression suffered up to the time of the preliminary determination was not sufficient for a finding of injury. The Tribunal, however, found that, in the absence of anti-dumping and countervailing duties, there was a clearly foreseen and imminent threat of material injury to the domestic industry in the form of net margin reductions, reduced profitability, lost sales, reduced production and lost market share. Fifteen special products were excluded from the Tribunal's findings. Also, imports from the Republic of Korea, which were negligible, were found not to have caused material injury and not to threaten material injury to the domestic industry.

**Inquiries in
Progress at the
End of 1995-96**

There were three inquiries in progress at the end of 1995-96. They were *Dry Pasta* (Inquiry No. NQ-95-003), *Bacteriological Culture Media* (Inquiry No. NQ-95-004 and *Portable File Cases* (Inquiry No. NQ-95-005).

**Public Interest
Consideration
Under Section 45
of SIMA**

Where, as a result of an injury inquiry, the Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties may not be in the public interest, it must report this to the Minister of Finance with a statement of the facts and reasons that led to its conclusions. It is then up to the Minister of Finance to decide whether there should be any reduction in duties. Also, during an injury inquiry, interested parties may make a request to the Tribunal for an opportunity to make representations on the matter of public interest. If the Tribunal decides to hear public interest representations, it does so upon completion of the injury inquiry, following guidelines established in fiscal year 1994-95.

During 1995-96, representations were received with respect to the findings in two inquiries. In the case of *Caps, Lids and Jars* (Public Interest Investigation No. PB-95-001), the Tribunal, after receiving representations and responses to the representations, issued a consideration which stated that the Tribunal was not convinced that a compelling public interest existed which would warrant further investigation. In the case of *Refined Sugar* (Public Interest Investigation No. PB-95-002), the Tribunal initiated an investigation subsequent to receiving representations and responses. The Tribunal held a four-day public hearing commencing at the end of March, and its decision regarding the public interest was pending at the end of the fiscal year.

Reviews

The Tribunal may review its findings of injury at any time, on its own initiative or at the request of the Deputy Minister or any other person or government. Subsection 76(5) of SIMA provides for a finding to lapse automatically five years after the date of issuance, unless a review has been initiated. It is Tribunal policy to notify parties eight months prior to the expiry date of a finding. If a review is requested, the Tribunal will initiate one if it determines that it is warranted.

Upon completion of a review, the Tribunal must issue an order with reasons, pursuant to subsection 76(4) of SIMA, much as in the case of an injury inquiry. If the finding is rescinded, anti-dumping or countervailing duties are no longer levied on imports. If the Tribunal continues a finding, it remains in force for a further five years unless it is reviewed again. The Tribunal may rescind or continue a finding with or without amendment.

During the 1995-96 fiscal year, the Tribunal issued four notices of expiry for findings respecting the following goods: oil and gas well casing, boneless manufacturing beef, carbon steel welded pipe (two findings) and stainless steel welded pipe. By the end of 1995-96, reviews had been initiated for all of the findings except the finding on stainless steel welded pipe.

Interested parties may also request a review at any time, pursuant to subsection 76(2) of SIMA. However, the Tribunal will initiate a review only if it determines that one is warranted, usually on the basis of changed circumstances. During the last fiscal year, a request was received to review the findings on refined sugar.

The purpose of a review is to determine if anti-dumping or countervailing duties remain necessary. The Tribunal assesses whether dumping is likely to resume or subsidizing is likely to continue and, if so, whether the dumping or subsidizing is likely to cause material injury to a domestic industry. Review procedures are similar to those in a SIMA injury inquiry.

Reviews Completed in 1995-96

In fiscal year 1995-96, the Tribunal completed five reviews. In the case of *Women's Footwear* (Review No. RR-94-003), the findings with respect to imports originating in the People's Republic of China were continued, with exclusions, while the findings against other countries were rescinded. Regarding *Refill Paper* (Review No. RR-94-005), the finding with respect to dumped imports from Brazil was continued, while the finding with respect to subsidized imports from Brazil was rescinded. With respect to *Whole Potatoes* (Review No. RR-94-007), the findings were continued with an amendment to exclude imports during the period from May 1 to July 31, inclusive, of each calendar year. Concerning the cases of *Carbon Steel Welded Pipe* (Review No. RR-94-004) and *Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves* (Review No. RR-94-006), the findings were continued.

Reviews in Progress at the End of 1995-96

Three reviews were in progress at the end of the fiscal year. They were *Oil and Gas Well Casing* (Review No. RR-95-001), *Carbon Steel Welded Pipe* (Review No. RR-95-002) and *Boneless Manufacturing Beef* (Review No. RR-95-003).

Table 2 summarizes the Tribunal's review activities during the fiscal year. Table 3 lists findings and orders in force as of March 31, 1996.

Advices Given Under Section 37 of SIMA

When the Deputy Minister decides not to initiate a dumping or subsidizing investigation because there is insufficient evidence of injury, the Deputy Minister or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Deputy Minister discloses a reasonable indication that the dumping or subsidizing has caused material injury or retardation or is threatening to cause material injury to a domestic industry. When the Deputy Minister decides to initiate an investigation, a similar recourse is available to the Deputy Minister or any person or government under section 34 of SIMA.

Section 37 of SIMA requires that the Tribunal render its advice on the issue within 30 days, without holding a hearing, on the basis of the information that was before the Deputy Minister when the decision regarding initiation was reached.

The Tribunal issued four advices during 1995-96. One advice was issued with respect to *Caps, Lids and Jars* (Reference No. RE-94-002) for a request made in the previous fiscal year. Three advices were issued with respect to requests received during the 1995-96 fiscal year. They are *Refined Sugar* (Reference No. RE-95-001), *Dry Pasta* (Reference No. RE-95-002) and *Bacteriological Culture Media* (Reference No. RE-95-003). The Tribunal

Judicial or Panel Review of SIMA Decisions

concluded, with respect to all four requests, that the evidence disclosed a reasonable indication that the dumping or subsidizing had caused material injury or was threatening to cause material injury to a domestic industry. The cases subsequently proceeded to the inquiry stage under section 42 of SIMA, and the Tribunal issued decisions in *Caps, Lids and Jars* and *Refined Sugar* during the 1995-96 fiscal year. The two other cases were in progress at the end of the fiscal year.

Anti-dumping and countervailing duty decisions can be judicially reviewed by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law.

In cases involving goods from the United States and Mexico, parties may request judicial review by the Federal Court of Canada or by a binational panel in accordance with amendments to SIMA brought about by the *North American Free Trade Agreement Implementation Act*.

Table 4 lists the Tribunal's decisions under section 43 or 76 of SIMA that were before the Federal Court of Canada or a binational panel for judicial review in fiscal year 1995-96. Eight reviews were completed during that time. Five of the reviews were conducted by the Federal Court of Canada, and, in all instances, the applications were dismissed and the decisions of the Tribunal affirmed. Three reviews were conducted by a binational panel. In two instances, the binational panel affirmed the Tribunal's decision. In the third case, *Synthetic Baler Twine*, the binational panel affirmed the Tribunal's determination that the dumping of the subject goods had caused material injury, but remanded its determination that continued dumping would likely cause material injury, instructing the Tribunal to identify evidence in the record establishing the likelihood of future injury or, failing that, to reopen the record to obtain such evidence. The Tribunal identified the evidence that it believed established the likelihood of future injury, reopened the record and took additional evidence on the point and made a determination that the dumping would likely cause material injury to the production in Canada of like goods. The binational panel affirmed the Tribunal's determination on remand.

WTO Dispute Resolution

Governments that are members of the WTO may appeal Tribunal injury findings in anti-dumping and countervailing cases to the WTO. The launching of an appeal must be preceded by inter-governmental consultations.

TABLE 1**Findings Issued Under Section 43 of SIMA Between April 1, 1995, and March 31, 1996,
and Inquiries Under Section 42 of SIMA in Progress at Year End**

Inquiry No.	Product	Country of Origin	Date of Finding	Finding
NQ-95-001	Caps, Lids and Jars	United States	October 20, 1995	Injury
NQ-95-002	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	November 6, 1995	No injury; but Threat of Injury (with certain product exclusions)
		Republic of Korea	November 6, 1995	No Injury or Threat of Injury
NQ-95-003	Dry Pasta	Italy	In Progress	
NQ-95-004	Bacteriological Culture Media	United States and United Kingdom	In Progress	
NQ-95-005	Portable File Cases	People's Republic of China	In Progress	

TABLE 2**Orders Issued Under Section 76 of SIMA Between April 1, 1995, and March 31, 1996,
and Reviews in Progress at Year End**

Review No.	Product	Country of Origin	Date of Order	Order
RR-94-003	Women's Footwear	People's Republic of China	May 2, 1995	Findings Continued (with product exclusions)
		Brazil, Poland, Romania, the former Yugoslavia and Taiwan	May 2, 1995	Findings Rescinded
RR-94-004	Carbon Steel Welded Pipe	Republic of Korea	June 5, 1995	Finding Continued
RR-94-005	Refill Paper	Federative Republic of Brazil	July 5, 1995	Finding of Dumping Continued; Finding of Subsidizing Rescinded
RR-94-006	Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves	Republic of Korea, Hong Kong, People's Republic of China, Singapore, Malaysia, Taiwan, Indonesia, Thailand and the Philippines	August 25, 1995	Findings Continued
RR-94-007	Whole Potatoes	United States	September 14, 1995	Findings Continued (with amendment)
RR-95-001	Oil and Gas Well Casing	Republic of Korea and United States	In Progress	
RR-95-002	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil	In Progress	
RR-95-003	Boneless Manufacturing Beef	European Union	In Progress	

TABLE 3**Findings and Orders in Force as of March 31, 1996¹**

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-90-005	June 10, 1991	Oil and Gas Well Casing	Republic of Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986)
RR-90-006	July 22, 1991	Boneless Manufacturing Beef	European Union	CIT-2-86 (July 25, 1986)
NQ-90-005	July 26, 1991	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand and Venezuela	
NQ-91-001	September 5, 1991	Stainless Steel Welded Pipe	Taiwan	
NQ-91-003	January 23, 1992	Carbon Steel Welded Pipe	Brazil	
NQ-91-004	February 7, 1992	Venetian Blinds	Sweden	
RR-91-003	February 25, 1992	Twisted Polypropylene and Nylon Rope	Republic of Korea	ADT-8-82 (October 7, 1982) R-6-86 (February 17, 1987)
NQ-91-005	March 13, 1992	Toothpicks	United States	
NQ-91-006	April 21, 1992	Machine Tufted Carpeting	United States	
RR-91-004	May 22, 1992	Yellow Onions	United States	CIT-1-87 (April 30, 1987)
RR-92-001	October 21, 1992	Waterproof Rubber Footwear	Czechoslovakia, Poland, Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and People's Republic of China	ADT-4-79 (May 25, 1979) ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987)

1. This table shows the findings and orders in force. To determine the precise product coverage, refer to the Review No. or Inquiry No. as identified in the first column of the table.

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
NQ-92-001	November 30, 1992	Iceberg Lettuce	United States	
NQ-92-002	December 11, 1992	Bicycles and Frames	Taiwan and People's Republic of China	
NQ-92-004	January 20, 1993	Gypsum Board	United States	
RR-92-003	February 25, 1993	Pocket Photo Albums and Refill Sheets	Japan, Republic of Korea, People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and Federal Republic of Germany	CIT-11-87 (February 26, 1988)
NQ-92-007	May 6, 1993	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	
NQ-92-009	July 29, 1993	Cold-Rolled Steel Sheet Products	Federal Republic of Germany, France, Italy, United Kingdom and United States	
NQ-93-001	October 18, 1993	Copper Pipe Fittings	United States	
NQ-93-002	November 19, 1993	Preformed Fibreglass Pipe Insulation	United States	
RR-93-001	November 23, 1993	Tillage Tools	Brazil	ADT-11-83 (December 28, 1983) R-9-88 (November 24, 1988)
RR-93-003	January 18, 1994	Paint Brushes and "Heads"	People's Republic of China	ADT-6-84 (June 20, 1984) R-7-84 (September 28, 1984) R-13-88 (January 19, 1989)

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
NQ-93-003	April 22, 1994	Synthetic Baler Twine	United States	
NQ-93-004	May 17, 1994	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	
NQ-93-005	June 22, 1994	12-Gauge Shotshells	Czech Republic and Republic of Hungary	
NQ-93-006	July 20, 1994	Black Granite Memorials and Black Granite Slabs	India	
NQ-93-007	July 29, 1994	Corrosion-Resistant Steel Sheet Products	Australia, Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	
NQ-94-001	February 9, 1995	Delicious and Red Delicious Apples	United States	
RR-94-002	March 21, 1995	Canned Ham and Canned Pork-Based Luncheon Meat	Denmark, Netherlands and European Union	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990)
RR-94-003	May 2, 1995	Women's Footwear	People's Republic of China	NQ-89-003 (May 3, 1990)
RR-94-004	June 5, 1995	Carbon Steel Welded Pipe	Republic of Korea	ADT-6-83 (June 28, 1983) RR-89-008 (June 5, 1990)
RR-94-005	July 5, 1995	Refill Paper	Federative Republic of Brazil	NQ-89-004 (July 6, 1990)

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-94-006	August 25, 1995	Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves	Republic of Korea, Hong Kong, People's Republic of China, Singapore, Malaysia, Taiwan, Indonesia, Thailand and the Philippines	ADT-4-74 (January 24, 1975) R-3-84 (August 24, 1984) CIT-18-84 (April 26, 1985) CIT-10-85 (February 14, 1986) CIT-5-87 (November 3, 1987) RR-89-012 (September 4, 1990) NQ-90-003 (January 2, 1991)
RR-94-007	September 14, 1995	Whole Potatoes	United States	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986) RR-89-010 (September 14, 1990)
NQ-95-001	October 20, 1995	Caps, Lids and Jars	United States	
NQ-95-002	November 6, 1995	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	

TABLE 4**Cases Before the Federal Court of Canada or a Binational Panel Between
April 1, 1995, and March 31, 1996**

Original Inquiry or Review No.	Product	Country of Origin	Forum	File No./ Status
NQ-92-007	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	FC	A-360-93 Application for Judicial Review Dismissed (May 23, 1995) A-375-93 Application for Judicial Review Dismissed (May 24, 1995)
NQ-92-008	Flat Hot-Rolled Carbon Steel Sheet Products	Federal Republic of Germany, France, Italy, New Zealand and United Kingdom	FC	A-410-93 Application for Judicial Review Dismissed (May 24, 1995)
NQ-93-003	Synthetic Baler Twine	United States	BNP	CDA-94-1904-02 Tribunal's Determination on Remand Affirmed (July 31, 1995)
NQ-93-004	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	FC	A-294-94 Application for Judicial Review Dismissed (June 21, 1995)
NQ-93-007	Corrosion-Resistant Steel Sheet Products	United States	BNP	CDA-94-1904-04 Tribunal's Finding Affirmed (July 10, 1995)
NQ-93-007	Corrosion-Resistant Steel Sheet Products	Australia, Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden and United Kingdom	FC	A-411-94 Application for Judicial Review Dismissed (January 16, 1996)
RR-94-001	Beer	United States	BNP	CDA-95-1904-01 Tribunal's Decision Affirmed (November 15, 1995)

Notes: FC — Federal Court of Canada
BNP — Binational Panel

CHAPTER IV

APPEALS

Introduction

The Tribunal, among its other duties, hears appeals from decisions of the Minister of National Revenue (the Minister) or of the Deputy Minister under the *Excise Tax Act*, the *Customs Act* and SIMA. When the federal sales tax was replaced by the Goods and Services Tax on January 1, 1990, there were a number of appeals awaiting determination by the Deputy Minister and decisions awaiting appeal to the Tribunal. As a result, in the last few years, the majority of appeals heard and decided by the Tribunal involved federal sales tax assessments and determinations. However, as the bulk of these appeals have now made their way through the appeal process at Revenue Canada and the Tribunal, the latter is hearing and deciding more appeals involving tariff classification and value for duty of imported goods under the *Customs Act*. The Tribunal also hears and decides appeals concerning the application, to imported goods, of a Tribunal finding concerning dumping or subsidizing and the normal value or export price or subsidy of imported goods under SIMA.

Although the Tribunal strives to be informal and accessible, there are certain procedures and time constraints that are imposed by law and by the Tribunal itself in order to provide quality service to the public in an efficient manner. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

Under the Tribunal's Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a "brief." Generally, the brief states under which act the appeal is launched, gives an indication of the points at issue between the appellant and the Minister or Deputy Minister (in legal terminology, the Minister or the Deputy Minister is called the respondent) and states why the appellant believes that the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth Revenue Canada's position. Once these formalities are out of the way, the Secretary of the Tribunal contacts both parties in order to schedule a hearing. Hearings are generally conducted in public, before Tribunal members.

Hearings

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their cases. They also enable the Tribunal to have the best information possible to make a decision. As in a court, the appellant and the respondent can call witnesses, and these witnesses are questioned under oath by the opposing parties, as well as by the members, in order to test the validity of their evidence. When all the evidence is gathered, parties may present arguments in support of their respective positions.

The option of a file hearing is also offered to the appellant. Where a hearing is not required and the Tribunal intends not to proceed by way of a hearing, it may dispose of the matter on the basis of the written documentation before it. Rule 25 of the Tribunal's Rules of Procedure allows the Tribunal to proceed in this manner. Before deciding to proceed in this manner, the Tribunal requires that the appellant and respondent consent to disposing of the appeal by way of a file hearing and file with the Tribunal an agreed statement of facts in addition to their submissions. The Tribunal then publishes a notice of the file hearing in the Canada Gazette so that other interested persons can make their own views known.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute, including the reasons for its decision.

If either the appellant or the respondent disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Canada.

Appeals Considered in the Last Fiscal Year

During the 1995-96 fiscal year, the Tribunal heard 75 appeals of which 40 related to the *Customs Act*, 32 to the *Excise Tax Act* and 3 to SIMA. Decisions were issued in 76 cases, of which 41 were heard during fiscal year 1995-96.

Decisions on Appeals

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	18	-	21	39
<i>Excise Tax Act</i>	9	4	19	32
<i>SIMA</i>	4	-	-	4
<i>Softwood Lumber Products Export Charge Act</i>	-	1	-	1

The table at the end of this chapter lists decisions on appeals rendered in fiscal year 1995-96.

Summary of Selected Decisions

Of the many cases heard by the Tribunal in carrying out its appeal functions, several decisions stand out from among the others, either because of the unusual nature of the product in issue or because of the legal significance of the case. A brief résumé of a representative sample of such cases follows. These summaries have been prepared for general information purposes only and have no legal status.

Chaps-Ralph Lauren, Division of 131384 Canada Inc. and Modes Alto Regal v. The Deputy Minister of National Revenue

AP-94-190 and
AP-94-191

Decision:
Appeals allowed
(November 1, 1995)

These were appeals under section 67 of the *Customs Act* in which the Tribunal considered whether Revenue Canada had correctly determined the value for duty of imported Polo-Ralph Lauren and Chaps-Ralph Lauren men's wear and Polo-Ralph Lauren boys' wear. Pursuant to subparagraph 48(5)(a)(i) of the *Customs Act*, commissions and brokerage fees paid in respect of the imported goods are to be added to the price paid or payable in the sale of the goods for export unless the fees paid or payable by the purchaser to the agent are for the service of representing that purchaser abroad in respect of the sale. The Tribunal found that the monies paid by the appellants to Mountain Rose (Singapore) Pte. Ltd., later named Polo Ralph Lauren Sourcing Pte. Ltd. (Mountain Rose), located in Hong Kong and Singapore, were "fees paid or payable by the purchaser to [its] agent for the service of representing [it] abroad in respect of the sale," pursuant to

subparagraph 48(5)(a)(i) of the *Customs Act* and were not, therefore, to be added to the price paid in the sale of the goods for purposes of determining the value for duty of those goods.

The Tribunal found that the evidence adduced before it showed that Mountain Rose had not exceeded the normal duties of a purchasing agent and had acted in the best interests of its principals. In particular, the Tribunal noted that Mountain Rose visited potential manufacturers on behalf of the appellants, examined samples, assisted employees of the appellants during work visits to the Orient, acted as a conduit for information between the appellants and the garment makers, inspected finished merchandise and arranged for shipments. Moreover, Mountain Rose did not acquire any proprietary interest or assume risk of ownership in the garments and did not assume any risk for damaged or lost goods.

With respect to the appellants' role in the purchases, the Tribunal noted that the appellants paid the manufacturers by opening letters of credit in their names and that the appellants controlled the activities of Mountain Rose, by having the final word on the choice of manufacturers, as well as on the type and quality of merchandise, on the price to be paid for the garments and on the details of shipment of the garments.

In the past fiscal year, the Tribunal decided four appeals under section 61 of SIMA involving the issue of whether imported goods were goods of the same description as goods subject to a finding or order of the Tribunal. Goods of the same description as goods to which a finding or order of the Tribunal apply are subject to anti-dumping and countervailing duties pursuant to section 3 of SIMA, which provides that such duties shall be paid on all dumped and subsidized goods imported into Canada in respect of which the Tribunal has made an order or finding that the dumping or subsidizing of goods of the same description has caused injury.

***Zellers Inc. v. The
Deputy Minister of
National Revenue***

AP-94-351

*Decision:
Appeal allowed
(January 25, 1996)*

The Tribunal found that imported bicycles described as having wheel diameters of 15.5 in. (39.37 cm) were not goods of the same description as bicycles, assembled or unassembled, with wheel diameters of 16 in. (40.64 cm) and greater, originating in or exported from Taiwan and the People's Republic of China and bicycle frames originating in or exported from the aforementioned countries, which are subject to a finding of the Tribunal under SIMA (Inquiry No. NQ-92-002).

The Tribunal found that the precise measurement of "16 inches (40.64 cm) and greater" used to define the lower end of the range of sizes of bicycles covered

**Midlon Foods Inc. v.
The Deputy Minister
of National Revenue**

AP-94-173

Decision:
Appeal allowed
(December 7, 1995)

by its finding in *Bicycles*, which on its face is clear and unambiguous, must be interpreted literally. The Tribunal reasoned that the fact that the metric equivalent of 16.0 in. (40.64 cm) was specified in the finding to the nearest one tenth of a millimetre persuasive evidence that diameters within 0.5 in. of 16.0 in. were not envisaged. The Tribunal also believes that it is significant that the appellant advertised and sold the bicycles with wheel diameters of 15.5 in. as such and did not try to pass them off as bicycles with wheel diameters of 16.0 in.

Interpreting the finding in *Bicycles* in this manner, the Tribunal concluded that the bicycles in issue, as they appeared in the marketplace, were not, in fact, "goods of the same description" as the goods to which the Tribunal's finding applies. The Tribunal found that this conclusion was supported by Revenue Canada's laboratory reports which compare the bicycles in issue with bicycles with wheel diameters of 16.0 in. made by the same Chinese manufacturer and marketed at the same time by the appellant. These reports note significant differences between the two bicycles, including that fact that "[t]he tires marked 15½ inches were too small and impossible to install on the rims from which the tires marked 16 inches came."

The Tribunal further found that the bicycles in issue were not covered by the phrase "and frames thereof" in the finding in *Bicycles*, as this phrase covers importations of frames, alone, that have yet to be used as components of bicycles. Leave to appeal this decision was denied by the Federal Court of Appeal in File No. 96-A-21, April 19, 1996.

The Tribunal found that Mermaid brand chopped ham imported into Canada was not a product of the same description as either canned ham under 1.5 kg per can, originating in or exported from Denmark and the Netherlands, or canned pork-based luncheon meat containing more than 20 percent by weight of pork, both of which are subject to findings of the Tribunal under SIMA. (SIMA was amended by section 115 of the *Customs Tariff* on January 1, 1988, to provide that Governor-in-Council orders, made pursuant to subsection 7(1) of the *Customs Tariff*, be deemed to have been made by the Tribunal under section 43 of SIMA. The findings were continued by the Tribunal on March 16, 1990, and again on March 21, 1995.)

In considering whether the goods in issue were of the same description as canned pork-based luncheon meat, the Tribunal noted several differences. First, port-based luncheon meat can be made from a variety of pork trimmings, as distinguished from chopped ham which is made only from the large muscles of the hind leg of a pig, the highest-quality meat available from the animal. Second, chopped ham is composed of larger pieces of meat than luncheon meat and contains no additives, in stark contrast to other Canadian-made luncheon meats. Third, chopped ham is more expensive than luncheon meat and is packaged in a

can of a different shape from that of the less expensive product. Finally, the Tribunal found that chopped ham is perceived in the market as a higher-quality product than canned pork-based luncheon meat and occupies a niche in the market separate from that of luncheon meat.

In considering whether the goods in issue were of the same description as canned ham, the Tribunal found that canned ham is a different quality product composed of larger pieces of ham and contains less comminuted material than chopped ham. Moreover, the Tribunal found that canned ham is perceived in the market as a premium product that comes at a commensurate price and that chopped ham occupies a niche in the market separate from that of canned ham.

**J.V. Marketing Inc. v.
The Deputy Minister
of National Revenue**

AP-91-188(R)

Decision:
Appeal allowed
(September 8, 1995)

The Tribunal found that Nike Saucony InStep 6220 fitness walking shoes were goods of the same description as footwear subject to the Tribunal's findings under SIMA in *Women's Leather Boots and Shoes Originating in or Exported from Brazil, the People's Republic of China and Taiwan; Women's Leather Boots Originating in or Exported from Poland, Romania and Yugoslavia; and Women's Non-Leather Boots and Shoes Originating in or Exported from the People's Republic of China and Taiwan*. More particularly, it was argued by the appellant that the goods in issue were "sports footwear" which are specifically excluded from the Tribunal's findings.

The Tribunal considered fitness walking to be a sport, in that it is an athletic activity involving more or less vigorous bodily exertion for the purposes of exercise. The Tribunal was of the view that the numerous features built into the walking shoes, making them suitable for fitness walking, established that they were designed for fitness walking. Having found that the walking shoes were designed for fitness walking and that fitness walking was a sport, the Tribunal concluded that the walking shoes were sports footwear and, therefore, excluded from the Tribunal's findings.

**General Films Inc. v.
The Deputy Minister
of National Revenue**

AP-94-169

Decision:
Appeal allowed
(April 18, 1995)

The Tribunal found that imported picture frames and photo albums were not goods of the same description as photo albums with pocket, slip-in or flip-up style sheets (imported together or separately), and refill sheets thereof, originating in or exported from Japan, the Republic of Korea, the People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and the Federal Republic of Germany, which are subject to an order of the Tribunal. The Tribunal found that, although the imported picture frames and photo albums had some of the characteristics of both picture frames and photo albums and had a metal front cover which contained a glass insert for the display of one photograph, they were of post-bound construction and typically contained 40 clear plastic leaves into which photographs could be inserted.

Appeal Decisions Rendered Under Section 67 (Formerly Section 47) of the *Customs Act*, Section 81.27 (Formerly Section 51.27) of the *Excise Tax Act* and Section 61 of SIMA Between April 1, 1995, and March 31, 1996

Appeal No.	Appellant	Date of Decision	Decision
<i>Customs Act</i>			
AP-94-102	I.D. Foods Superior Corp.	June 8, 1995	Dismissed
AP-94-121 and AP-94-122	Pepsi-Cola Canada Ltd. and Pepsi-Cola Canada Beverages (West) Ltd.	June 20, 1995	Dismissed
AP-94-188	HFI Hardwood Flooring Inc.	July 17, 1995	Allowed
AP-94-166	R.B. Packings & Seals Inc.	July 21, 1995	Dismissed
AP-94-116 and AP-94-186	Farmer's Sealed Storage Inc.	July 25, 1995	Dismissed
AP-94-168	Carlton Canada Limited	August 3, 1995	Dismissed
AP-94-157	Canadian Tire Corporation Ltd.	October 12, 1995	Allowed
AP-94-159	Calavo Foods, Inc.	October 12, 1995	Allowed
AP-94-240	Wynne Biomedical Ltd.	October 12, 1995	Dismissed
AP-94-232	Kappler Canada Ltd.	October 26, 1995	Allowed
AP-94-185	Hoechst Canada Inc.	October 27, 1995	Allowed
AP-94-195	Bernard Monastesse Inc.	October 27, 1995	Allowed
AP-94-256	Daniel Spiess	October 27, 1995	Dismissed
AP-94-190 and AP-94-191	Chaps-Ralph Lauren, Division of 131384 Canada Inc. and Modes Alto Regal	November 1, 1995	Allowed
AP-94-202	Canadian Satellite Communications Inc.	December 8, 1995	Allowed
AP-92-291 and AP-93-041	Princess Auto Ltd.	December 19, 1995	Dismissed
AP-93-359	Ballarat Corporation Ltd.	December 19, 1995	Allowed
AP-94-073	Best Brands Inc.	January 25, 1996	Dismissed
AP-94-215	The Perrier Group of Canada Ltd.	January 25, 1996	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-94-329	Simark Controls Ltd.	January 25, 1996	Allowed
AP-94-362	Dr. Maria Blass	January 25, 1996	Dismissed
AP-94-353	Shop-Vac Canada Ltd.	January 30, 1996	Dismissed
AP-89-284	Special Missions Group Limited	February 13, 1996	Dismissed
AP-94-357	Krueger International Canada Inc.	February 14, 1996	Allowed
AP-94-340, AP-95-133 and AP-95-136	Northern Telecom Canada Limited	February 26, 1996	Allowed
AP-94-172	Martin Lechasseur	March 6, 1996	Dismissed
AP-92-294	Shafer Valve Co. of Canada Ltd.	March 19, 1996	Dismissed
AP-95-080	Thinkway Trading Corporation	March 19, 1996	Dismissed
AP-94-359 and AP-94-360	Jewelway International Canada, Inc. and Jewelway International, Inc.	March 26, 1996	Dismissed
AP-95-013, AP-95-073 and AP-95-078	Spacesaver Corporation	March 26, 1996	Allowed
Excise Tax Act			
AP-94-075	Tee-Comm Electronics Inc.	April 21, 1995	Allowed
AP-92-210 and AP-92-211	Cross Lake Band of Indians and Bloodvein Indian Band	May 26, 1995	Dismissed
AP-92-282	P.A. Bottlers Ltd.	May 31, 1995	Allowed in part
AP-93-384	Les Entreprises Réal Lussier Inc.	July 17, 1995	Dismissed
AP-93-360, AP-94-061, AP-94-062 and AP-94-063	Lakefield College School, McMaster University, Wilfrid Laurier University and University of Guelph	July 17, 1995	Allowed
AP-94-147	Provincial Treasurer, Alberta Department of Health	July 21, 1995	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-94-098	Provincial Treasurer, Alberta Department of Public Works, Supply and Services	July 25, 1995	Dismissed
AP-93-004	Canadian Technical Tape Ltd.	July 26, 1995	Dismissed
AP-93-123	W. Ralston (Canada) Inc.	July 26, 1995	Dismissed
AP-94-153	Poli-Twine Canada, A Division of TecSyn International Inc.	August 3, 1995	Allowed
AP-94-154	Empire Iron Works Ltd.	August 3, 1995	Dismissed
AP-93-265	Richmond Development Corp.	August 8, 1995	Allowed
AP-94-167	Security Card Systems Inc.	August 28, 1995	Allowed in part
AP-93-052	George Strange Ltd.	September 5, 1995	Dismissed
AP-93-334	Earl A. Abas	September 5, 1995	Dismissed
AP-94-189	Bechtel-Kumagai	October 27, 1995	Dismissed
AP-93-382	Skywood P.V.C. Extrusion Inc.	October 27, 1995	Allowed in part
AP-92-264*	R.S. Harris Ltd.	December 7, 1995	Allowed in part
AP-94-160 and AP-94-163	Van City Cultured Marble Products Ltd.	December 20, 1995	Dismissed
AP-93-138	Reichert's Sales and Service Ltd.	January 22, 1996	Dismissed
AP-94-114	Aerotec Sales & Leasing Ltd.	January 25, 1996	Dismissed
AP-94-350	MacLean Hunter Limited	January 25, 1996	Allowed in part
AP-94-317	USAir, Inc.	January 26, 1996	Dismissed
AP-93-083	Leggett & Platt Incorporated	March 6, 1996	Dismissed
AP-94-198	Maurice Jacob Inc.	March 6, 1996	Allowed
AP-94-265	Super Générateur Inc.	March 6, 1996	Dismissed
AP-95-050	BDR Sportsnutrition Laboratories Ltd.	March 6, 1996	Allowed
AP-94-233	Adult Developmental Program c/o Newmarket and District Association for Community Living	March 29, 1996	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
<i>Special Import Measures Act</i>			
AP-94-169	General Films Inc.	April 18, 1995	Allowed
AP-91-188 (R)	J.V. Marketing Inc.	September 8, 1995	Allowed
AP-94-173	Midlon Foods Inc.	December 7, 1995	Allowed
AP-94-351	Zellers Inc.	January 25, 1996	Allowed
<i>Softwood Lumber Products Export Charge Act</i>			
AP-92-264*	R.S. Harris Ltd.	December 7, 1995	Allowed in part

* Appeal heard under more than one act.

CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

Introduction

The CIIT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the government or the Minister of Finance.

Tariff-Related Inquiries

Under section 19 of the CIIT Act, the Minister of Finance may refer to the Tribunal for inquiry and report “any tariff-related matter, including any matter concerning the international rights or obligations of Canada in connection therewith.”

Textile Reference

Pursuant to a reference from the Minister of Finance dated July 6, 1994, and amended on March 20, 1996, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister of Finance.

Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, for production. The textile inputs for which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of Schedule I to the *Customs Tariff*.

Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, to company-, textile- and/or end-use-specific tariff provisions. The recommendation could be for either temporary or indeterminate tariff relief. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.

Investigations

When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as Revenue Canada, the Department of Foreign Affairs and International Trade, the Department of Industry and the Department of Finance. The notice is also published in the Canada Gazette.

In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.

To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits or questionnaires. Information is obtained from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of determining whether the tariff relief sought will maximize net economic gains for Canada.

In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.

The procedures developed for the conduct of the Tribunal's investigations envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

Where confidential information is provided to the Tribunal, such information falls within the protection of the CITT Act. Accordingly, the Tribunal will only distribute confidential information to counsel who are acting on behalf of a party and who have filed a declaration and undertaking.

Recommendations to the Minister	<p>The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within any earlier specified time frame which the Tribunal determines to be appropriate. The Tribunal will recommend the reduction or removal of customs duties on a textile input where it will maximize net economic gains for Canada.</p>
Review Process	<p>Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal or amendment of the order. A request for the amendment of the order should specify what changed circumstances justify such a request.</p>
Annual Status Report	<p>In accordance with the terms of reference received by the Tribunal directing it to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations, the Tribunal provided the Minister of Finance, on November 30, 1995, with its first annual status report on the investigation process. The status report covered the period from October 1, 1994, to September 30, 1995. In the course of preparing the status report, the Tribunal invited its stakeholders to comment on the investigation process and to make suggestions on how it could be improved. The Tribunal heard oral submissions on October 18, 1995.</p> <p>On March 20, 1996, following consultations with the industry and after reviewing the Tribunal's first annual status report on the textile reference, the Minister of Finance made the following principal amendments to the terms of reference:</p> <ul style="list-style-type: none"> (i) a new provision allows the Tribunal to recommend tariff relief for an indeterminate period (replaces recommendations for permanent relief); (ii) the amount of time afforded the Tribunal to conduct an investigation in cases of "critical circumstances" is now any period earlier than 120 days as determined appropriate (instead of within 60 days); and (iii) tariff investigations should not cover goods beyond those established at the commencement of the investigation, except where notice affords sufficient time for parties to respond.

Recommendations Submitted During 1995-96	<p>During fiscal year 1995-96, the Tribunal issued 21 reports to the Minister of Finance which related to 24 requests for tariff relief. At year end, 58 requests were outstanding, of which investigations had been commenced in 46 cases. Table 1 at the end of this chapter summarizes these activities.</p>
Recommendations in Place	<p>At the end of fiscal year 1995-96, the Government had implemented seven recommendations by the Tribunal. Table 2 provides a summary of recommendations implemented to date.</p> <p>A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.</p>
<p>Kute-Knit Mfg. Inc.</p> <p><i>TR-94-002 and TR-94-002A</i></p>	<p>The Tribunal recommended to the Minister of Finance that the customs duty on importations of combed, ring-spun, polycotton, blended yarns be removed for a three-year period. In its report, the Tribunal indicated that there was no domestic production of combed, ring-spun yarns in Canada and that the price differential between combed, ring-spun yarns and other combed and carded yarns is significantly greater than the current MFN tariff. The primary direct benefits of granting tariff relief were estimated at more than \$250,000 per annum, if the subject yarns were all dutiable at the MFN rate of duty.</p> <p>Further to this recommendation, the Minister of Finance requested (Request No. TR-94-002A) that the Tribunal inquire into information submitted to him by Canadian Yarns Ltd., a producer of certain carded, open-end spun yarns, taking into account information previously submitted in Request No. TR-94-002. On the basis of its examination of the record, including the new information provided by Canadian Yarns Ltd., the Tribunal found no reason to change the recommendation in Request No. TR-94-002 and, accordingly, recommended that the customs duty on importations of combed, ring-spun, polycotton, blended yarns be removed for a three-year period.</p>
<p>Woods Canada Ltd.</p> <p><i>TR-94-007</i></p>	<p>The Tribunal recommended to the Minister of Finance that the request for tariff relief on importations of certain 100 percent dyed nylon fabric of either plain weave or ripstop construction with a calendered finish, for use in the production of outer shells and carrying cases for sleeping bags, not be granted. The Tribunal was satisfied that Consoltex Inc., a Canadian firm, produced fabrics that are substitutable for the subject fabric and that these are sold to Canadian producers of sleeping bags for use in the production of outer shells. The Tribunal found that granting tariff relief would harm Consoltex Inc. considerably more than it would help domestic sleeping bag producers.</p>

**Château Stores of
Canada Ltd. and
Hemisphere
Productions Inc.**

TR-94-011 and
TR-94-019

The Tribunal recommended to the Minister of Finance that the customs duty on importations of five-harness satin weave fabric, woven from high-twist (over 960 turns per metre) blended yarns of 65 percent by weight polyester staple fibres and 35 percent by weight viscose rayon staple fibres, for use in the production of ladies' vests, pants, skirts, dresses, shorts and blazers and men's vests, pants and jackets, be removed for a period of two years. The Tribunal indicated in its report that, in addressing the issue of substitutability, it looked at the technical description of the allegedly substitutable domestic fabrics, their market acceptance, their price and the producers' ability to supply. While recognizing that Canadian manufacturers produced many fabrics which, to a limited degree, are substitutable for the subject fabric and that, as a result, there may be some negative impact of tariff relief on Canadian fabric producers, the Tribunal put much weight on submissions made by two Canadian textile firms that stated that they were in the process of developing a domestic supply of a high-twist woven fabric with the same features, qualities and market acceptance as the subject fabric. In the Tribunal's view, this supported the fact that the current domestic fabrics are not direct substitutes for the subject fabric. The primary direct benefits of granting tariff relief were estimated at just over \$1.1 million per annum, if the subject fabric were dutiable under the MFN tariff.

**Healtex
Manufacturing Inc.**

TR-94-015

The Tribunal recommended to the Minister of Finance that the request for tariff relief on importations of a three-layer construction fabric known as "Mertex Plus," used in the manufacture of surgical gowns and drapes, not be granted. The Tribunal was satisfied that there are domestic textile producers that have invested heavily to produce substitutes for the subject fabric and that granting tariff relief would adversely affect the work that they have done to date and their future plans. The Tribunal concluded that granting the tariff relief would harm Canadian producers considerably more than it would help the requester.

**Hi Fibre Textiles
(Sugoi) Ltd.**

TR-94-014

The Tribunal recommended to the Minister of Finance that the request for the removal of the customs duty on importations of a 100 percent polyester double knit jersey fabric known as TD1300C (Fieldsensor), for use in the production of women's and unisex cycling jerseys, be denied, but recommended reducing the Canadian MFN tariff to equal the U.S. MFN tariff on imports for an indeterminate period of time. In the view of two panel members, granting the tariff relief as requested would likely hurt Canadian producers more than it would help the requester, but reducing the Canadian MFN tariff to equal the U.S. MFN tariff on imports of the subject fabric would provide a commercial benefit to the requester and improve its competitiveness, while resulting in little or no cost to Canadian producers. The dissenting member was of the view that the reduction of

the tariff as recommended would result in costs to Canadian producers that would significantly exceed the benefits accruing to the requester and, consequently, would have denied the request. The primary direct benefits of granting tariff relief were estimated to be in excess of \$9,300 per annum.

TABLE 1**Disposition of Requests for Tariff Relief Between April 1, 1995, and March 31, 1996**

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-94-002	Kute-Knit Mfg. Inc.	yarn	July 5, 1995	Three-year tariff relief
TR-94-002A	Kute-Knit Mfg. Inc.	yarn	January 22, 1996	Three-year tariff relief
TR-94-003	Canastro Textiles Inc.	yarn	Not yet initiated	
TR-94-004	Woods Canada Ltd.	fabric	June 8, 1995	Permanent tariff relief
TR-94-005	Hemisphere Productions Inc.	fabric	June 22, 1995	Three-year tariff relief
TR-94-007	Woods Canada Ltd.	fabric	July 6, 1995	Tariff relief not granted
TR-94-008	Château Stores of Canada Ltd.	fabric	February 13, 1996	Tariff relief not granted
TR-94-009	Équipement Saguenay (1982) Ltée	fabric	June 5, 1995	Three-year tariff relief
TR-94-010	Palliser Furniture Ltd.	fabric	August 23, 1995	Permanent tariff relief
TR-94-011 and TR-94-019	Château Stores of Canada Ltd. and Hemisphere Productions Inc.	fabric	September 19, 1995	Two-year tariff relief
TR-94-012	Peerless Clothing Inc.	fabric	January 17, 1996	Indeterminate tariff relief
TR-94-013 and TR-94-016	MWG Apparel Corp.	fabric	November 30, 1995	Permanent tariff relief
TR-94-014	Hi Fibre Textiles (Sugoi) Ltd.	fabric	January 29, 1996	Indeterminate tariff relief
TR-94-015	Healtex Manufacturing Inc.	fabric	October 2, 1995	Tariff relief not granted
TR-94-017 and TR-94-018	Elite Counter & Supplies	fabric	August 31, 1995	Permanent tariff relief
TR-94-020	Sunsoakers Inc.	fabric	January 17, 1996	Tariff relief not granted
TR-94-021	Château Stores of Canada Ltd.	fabric	July 4, 1995	Withdrawn

Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-001	Dunlop Tires (Canada) Ltd.	n/a	May 1, 1995	Terminated - Lack of jurisdiction
TR-95-002	J.A. Besner & Sons (Canada) Ltd.	fabric	November 9, 1995	Terminated - Non-compliance
TR-95-003	Landes Canada Inc.	fabric	October 4, 1995	Permanent tariff relief
TR-95-004	Lingerie Bright Sleepwear (1991) Inc.	fabric	March 6, 1996	Indeterminate tariff relief
TR-95-005	Lingerie Bright Sleepwear (1991) Inc.	fabric	March 6, 1996	Indeterminate tariff relief
TR-95-006	Pelion Mountain Products Ltd.	fabric	February 16, 1996	Tariff relief not granted
TR-95-007 and TR-95-008	Pararad Inc.	fabric	In Progress	
TR-95-009	Peerless Clothing Inc.	fabric	In Progress	
TR-95-010, TR-95-033 and TR-95-034	Freed & Freed International Ltd., E. & J. Manufacturing Ltd. and Fen-nelli Fashions Inc.	fabric	In Progress (TR-95-033 — Withdrawn on November 23, 1995)	
TR-95-011	Louben Sportswear Inc.	fabric	March 21, 1996	Indeterminate tariff relief
TR-95-012	Perfect Dyeing Canada Inc.	yarn	February 26, 1996	Indeterminate tariff relief
TR-95-013	Doubletex	fabric	In Progress	
TR-95-014	Palliser Furniture Ltd.	fabric	In Progress	
TR-95-015 to TR-95-032, TR-95-038 to TR-95-042, TR-95-046, TR-95-048 to TR-95-050 and TR-95-055	Fantastic-T Knitter Inc., B.C. Garment Factory Ltd. and Global Garment Factory Ltd.	fabric	In Progress	

Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-035, TR-95-043 and TR-95-044	Beco Industries Ltd.	fabric	In Progress	
TR-95-036	Canadian Mill Supply Co. Ltd.	fabric	In Progress	
TR-95-037	Paris Star Knitting Mills Inc.	fabric	In Progress	
TR-95-045	Yeadon Fabric Structures Ltd.	fabric	Not yet initiated	
TR-95-047	B.C. Garment Factory Ltd.	yarn	In Progress	
TR-95-051	Camp Mate Limited	fabric	In Progress	
TR-95-052	National-General Filter Products Ltd.	fabric	Not yet initiated	
TR-95-053 and TR-95-059	Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	fabric	In Progress	
TR-95-054	Handler Textile (Canada) Inc.	fabric	In Progress	
TR-95-056	Sealy Canada Ltd.	fabric	In Progress	
TR-95-057	Doubletex	fabric	Not yet initiated	
TR-95-058	Doubletex	fabric	Not yet initiated	
TR-95-060	Triple M Fiberglass Manufacturing Ltd.	fabric	Not yet initiated	
TR-95-061	Camp Mate Limited	fabric	Not yet initiated	
TR-95-062	Freed & Freed International Ltd.	fabric	Not yet initiated	

Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-063	Buckeye Industries, Division of Williamson- Dickie Mfg. Co.	fabric	Not yet initiated	
TR-95-064	Lady Americana Sleep Products Inc.	fabric	Not yet initiated	
TR-95-065	Elran Furniture Ltd.	fabric	Not yet initiated	
TR-95-066	Lenrod Industries Ltd.	fabric	Not yet initiated	

TABLE 2

Tariff Relief Recommendations in Place

Request No.	Requester	Order in Council	Date of Order in Council	Duration
TR-94-001	Canatex Industries (Division of Richelieu Knitting Inc.)	P.C. 1995-833	May 30, 1995	Permanent tariff relief
TR-94-004	Woods Canada Ltd.	P.C. 1995-1200	July 26, 1995	Permanent tariff relief
TR-94-005	Hemisphere Productions Inc.	P.C. 1995-1200	July 26, 1995	Three-year tariff relief
TR-94-009	Équipement Saguenay (1982) Ltée	P.C. 1995-1200	July 26, 1995	Three-year tariff relief
TR-94-017 and TR-94-018	Elite Counter & Supplies	P.C. 1995-2100	December 13, 1995	Permanent tariff relief
TR-95-003	Landes Canada Inc.	P.C. 1995-2100	December 13, 1995	Permanent tariff relief

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Suppliers may now challenge procurements that they believe have not been carried out in accordance with the requirements of the following: Chapter Ten of NAFTA, Chapter Five of the AIT or the WTO *Agreement on Government Procurement*. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, and January 1, 1996, respectively.

Any potential suppliers who believe that they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts on a designated procurement, may lodge a formal complaint with the Tribunal. A potential supplier with an objection is encouraged to resolve the issue first with the government institution responsible for the procurement. When this process is not successful or a supplier wants to deal directly with the Tribunal, the complainant may ask the Tribunal to consider the case by filing a complaint within the prescribed time limit.

When the Tribunal receives a complaint, it reviews the submission against the criteria for filing. If there are deficiencies, the complainant is given an opportunity to correct these within a specified time limit. Once the complaint meets the criteria for filing, the government institution and all other interested parties are sent a formal notification of the complaint. A copy of the complaint is sent to the government institution. When the Tribunal decides to conduct an inquiry, an official notice of the complaint is published in Government Business Opportunities and the Canada Gazette. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal, unless the government institution certifies that the procurement is urgent or that the delay would be against the public interest.

After receipt of its copy of the complaint, the government institution responsible for the procurement files a report responding to the allegations. The complainant is then sent a copy of the Government Institution Report and has seven days to submit comments. These are forwarded to the government institution and any interveners.

A staff investigation, which can include interviewing individuals and examining files and documents, may be conducted and result in the production of

a Staff Investigation Report. This report is circulated to the parties for their comment. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

The Tribunal then makes a determination, which may consist of recommendations to the government institution (such as re-tendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing complainant for filing and proceeding with the bid challenge and/or costs for preparing the bid. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal in its determination are to be implemented to the greatest extent possible.

Summary of Procurement Review Activities

	1994-95	1995-96
CASES RESOLVED BY OR BETWEEN PARTIES		
Resolved Between Parties	1	3
Withdrawn	2	3
Abandoned While Filing	<u>1</u>	<u>4</u>
Subtotal	4	10
INQUIRIES NOT INITIATED ON PROCEDURAL GROUNDS		
Lack of Jurisdiction	9	8
Late Filing	2	4
No Valid Basis	<u>3</u>	<u>6</u>
Subtotal	14	18
CASES DETERMINED ON MERIT		
No Valid Basis	4	3
Upheld on Merit	<u>1</u>	<u>3</u>
Subtotal	5	6
IN PROGRESS	<u>2</u>	<u>8</u>
TOTAL	25	42

Note: All 1995-96 complaints were lodged by Canadian suppliers.

Summary of Decisions

Martin Marietta Canada Ltd.

94N66T-021-0020

During fiscal year 1995-96, the Tribunal issued six written determinations of its findings and recommendations. Eight other cases were in progress at year end. The table at the end of this chapter summarizes these activities, as well as those cases resolved by or between parties.

A complaint was filed relating to the award of a contract by the Department of Public Works and Government Services (the Department) for the supply of a Vessel Traffic Service simulator for the Department of Transport Canadian Coast Guard College in Sydney, Nova Scotia. The Tribunal determined that the complaint was valid. In the Tribunal's view, the Department's finding that all bidders were not responsive was procedurally in compliance with Chapter Ten of NAFTA. However, the negotiation contemplated under Article 1014 of NAFTA envisages that suppliers be permitted to submit new or amended tenders during the negotiation process and to submit final tenders once negotiations have concluded. Although the Department was of the opinion that "[a]ll firms agreed" to a change in the bid evaluation method, the Tribunal found that, although all firms extended their bid acceptance period, two suppliers expressed, in writing, their disagreement to the change in the evaluation method. The Tribunal also found that the Department had no intention of permitting the submission of new or amended tenders and, thus, was not conducting negotiations in accordance with the provisions of Chapter Ten of NAFTA. Indeed, in this situation, where there were no responsive bidders and where the initial procurement was substantially modified, the Tribunal found that the Department had no choice but to re-issue the solicitation in accordance with the requirements of Chapter Ten of NAFTA. Pursuant to subsections 30.15(4) and 30.16(1) of the CITTA Act, the Tribunal awarded the complainant its reasonable costs incurred in preparing a response to the solicitation and in relation to filing and proceeding with its complaint.

R.E.D. Electronics Inc.

94N660-021-0024

A complaint was filed relating to the award of a contract by the Department for the supply of distributed intelligent network hub systems, including installation, integration, the provision of cabling services and on-site maintenance services for a three-year period, for the Department of Finance's internal network in Ottawa. The Tribunal determined that the complaint was valid. The Tribunal found that the Department's interpretation of the specification was at variance with the language of the specification, when viewed as a whole. The Department did not originally intend such an interpretation, as evidenced in its proposal clarification questions sent to the contract awardee after bid closing. In order for the contract awardee's proposal to have been considered responsive, it was necessary to ignore the overall meaning and intention of the specification. Although the solution proposed by the contract awardee may have met the

performance objectives in an original and unique manner, to accept it, when it was not compliant with the wording of essential requirements of the Request for Proposal, was a violation of Article 1015(4)(d) of NAFTA. Pursuant to subsections 30.15(4) and 30.16(1) of the CITT Act, the Tribunal awarded the complainant its reasonable costs incurred in preparing a response to the solicitation and in relation to filing and proceeding with its complaint.

Mechron Energy Ltd.

PR-95-001

A complaint was filed relating to the award of a contract by the Department for the supply of five uninterruptible power systems for installation at the Department of Transport Area Control Centres across Canada. The Tribunal determined the complaint was valid. The Tribunal concluded that the additional information provided by the contract awardee as a result of the “clarification” process amounted, in fact, to substantive modifications, revisions or alterations of the contents of the contract awardee’s original proposal in respect of a number of essential requirements. The Tribunal found that the Department overlooked, varied or put aside the evaluation rules that it had set out in the Request for Proposal and, in so doing, improperly declared compliant a proposal which, at the time of bid opening, failed to meet certain mandatory and rated desirable technical requirements, each and every one of which was an essential requirement as defined in the Request for Proposal. In the Tribunal’s view, this constituted a breach of Article 1015(4)(a) of NAFTA. Pursuant to subsections 30.15(4) and 30.16(1) of the CITT Act, the Tribunal awarded the complainant its reasonable costs incurred in preparing a response to the solicitation and in relation to filing and proceeding with its complaint. The Tribunal also recommended that the contract be terminated and that it be awarded to the complainant. The Tribunal, considering the possible impact of its decision, recommended, as an alternative, that the Department present to the Tribunal, within 30 days of its decision, a proposal for compensation, developed jointly with the complainant, that recognizes the prejudice suffered by the complainant in being deprived of the contract and of the opportunity to profit therefrom.

AmeriData Canada Ltd.

PR-95-011

A complaint was filed concerning the procurement by the Department for the supply of informatic professional services for the Department of National Defence at Canadian Forces Base Borden, Ontario. The Tribunal was of the view, based on the evidence before it, that the Department, in conducting its evaluation, did not deviate from what was stipulated in the Request for Proposal, and no new unannounced criteria were added. The Tribunal determined, in consideration of the subject matter of the complaint, that the procurement was conducted according to Chapter Five of the AIT and, therefore, that the complaint was not valid.

**Cabletron Systems of
Canada Ltd.**

PR-95-018

A complaint was filed concerning the procurement by the Department for the supply, by means of a National Individual Standing Offer, of concentrators and Ethernet switches for the Royal Canadian Mounted Police across Canada. The Tribunal, having examined the evidence and arguments presented by both parties and having considered the obligations specified in both the AIT and NAFTA, concluded that the complaint was not valid. The Tribunal was of the view that the specification was not unnecessarily restrictive and that the Department had, in good faith, balanced its requirements and the concerns expressed by various potential suppliers both before and after the publication of a Notice of Proposed Purchases up to bid closing.

**Array Systems
Computing Inc.**

PR-95-024

A complaint was filed concerning the procurement by the Department for the provision of an advanced communications electronic support measure system architectural study for Defence Research Establishment Ottawa, a constituent of the Department of National Defence. The Tribunal, having examined the evidence and arguments presented by both parties and having considered the obligations specified in the AIT, concluded that the complaint was not valid. The procedure followed in establishing the Statement of Work contained some checks to ensure that the requirement was not formulated in such a manner as to deliberately exclude certain suppliers (on this point, the Tribunal commented that there may be some merit in setting up a standing committee at the scientific authority to review technical specifications); the requirement of specific expertise for certain proposed team members was not unreasonable; and, although there may be some subjectivity in the application of these types of evaluation criteria, this is not prohibited by the AIT and, in fact, in the opinion of the Tribunal, professional judgement is perfectly normal and to be expected for any type of procurement.

Disposition of Procurement Complaints Between April 1, 1995, and March 31, 1996

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
94N66T-021-0020	Martin Marietta Canada Ltd.	January 16, 1995	Decision issued on April 20, 1995 Complaint valid/Complainant awarded complaint and bid preparation costs
94N6660-021-0024	R.E.D. Electronics Inc.	April 7, 1995	Decision issued on July 26, 1995 Complaint valid/Complainant awarded complaint and bid preparation costs
PR-95-001	Mechron Energy Ltd.	April 5, 1995	Decision issued on August 18, 1995 Complaint valid/Complainant awarded complaint and bid preparation costs/Recommended that complainant be awarded contract or, in the alternative, compensation
PR-95-002	Fulton Boiler Works Canada Inc.	April 5, 1995	Not accepted for inquiry/Late filing
PR-95-003	International Rose Reporting (Central) Inc.	April 6, 1995	Not accepted for inquiry/Not a designated contract
PR-95-004	Pathfinder Systems Design Ltd.	April 21, 1995	Not accepted for inquiry/Not a designated contract
PR-95-005	Keystone Supplies Company	May 9, 1995	Not accepted for inquiry/No reasonable indication of breach
PR-95-006	Training Task Group	May 23, 1995	Abandoned while filing
PR-95-007	André McNicoll Communications International	June 7, 1995	Abandoned while filing
PR-95-008	Mercury Machine & Mfg. Co.	June 23, 1995	Resolved between parties
PR-95-009	Blair's Mechanical Inc.	June 28, 1995	Not accepted for inquiry/No reasonable indication of breach
PR-95-010	Farrell & Associates Inc.	September 25, 1995	Resolved between parties
PR-95-011	AmeriData Canada Ltd.	September 28, 1995	Decision issued on February 9, 1996 Complaint not valid
PR-95-012	Democracy Education Network	September 28, 1995	Not accepted for inquiry/Not a designated contract
PR-95-013	Enconair Ecological Chambers Inc.	November 13, 1995	Not accepted for inquiry/No reasonable indication of breach

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-95-014	Enconair Ecological Chambers Inc.	November 13, 1995	Not accepted for inquiry/No reasonable indication of breach
PR-95-015	FirstMark Technologies Ltd.	November 22, 1995	Not accepted for inquiry/Late filing
PR-95-016	Greenwood Environmental Inc.	November 27, 1995	Not accepted for inquiry/Not a government institution
PR-95-017	C.A.E. Aviation Ltd.	December 1, 1995	Not accepted for inquiry/Procurement initiated before coming into force of the AIT
PR-95-018	Cabletron Systems of Canada Ltd.	December 5, 1995	Decision issued on March 8, 1996 Complaint not valid
PR-95-019	Bristol Aerospace Limited	December 5, 1995	Not accepted for inquiry/Procurement initiated before coming into force of the AIT
PR-95-020	Hewlett Packard (Canada) Ltd.	December 12, 1995	Resolved between parties
PR-95-021	I.M.P. Group	December 15, 1995	Not accepted for inquiry/Procurement initiated before coming into force of the AIT
PR-95-022	Tayco Panelink Ltd.	December 22, 1995	Not accepted for inquiry/Late filing
PR-95-023	Array Systems Computing Inc.	January 5, 1996	Accepted for inquiry
PR-95-024	Array Systems Computing Inc.	January 10, 1996	Decision issued on March 25, 1996 Complaint not valid
PR-95-025	Ahearn & Soper Inc.	January 15, 1996	Complaint withdrawn
PR-95-026	Ahearn & Soper Inc.	January 18, 1996	Not accepted for inquiry/Not a designated contract and procurement initiated before coming into force of the AIT
PR-95-027	Kamco Food Equipment Ltd.	January 27, 1996	Abandoned while filing
PR-95-028	Bay Networks Canada Inc.	February 29, 1996	Complaint withdrawn
PR-95-029	DGS Information Consultants	February 14, 1996	Complaint withdrawn
PR-95-030	Versatech Products Inc.	February 16, 1996	Not accepted for inquiry/Late filing
PR-95-031	FPG/HRI Joint Venture	February 26, 1996	Accepted for inquiry
PR-95-032	Reicore Tech. Inc.	February 27, 1996	Abandoned while filing

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-95-033	Emcon Emanation Control Limited	March 5, 1996	Accepted for inquiry/Postponement of award order issued
PR-95-034	P & L Services	March 11, 1996	Not accepted for inquiry/No reasonable indication of breach
PR-95-035	Secure Technologies International Inc.	March 15, 1996	Accepted for inquiry/Postponement of award order issued
PR-95-036	Kaycom Inc.	March 19, 1996	Not accepted for inquiry/No reasonable indication of breach
PR-95-037	Taftek	March 22, 1996	Accepted for inquiry
PR-95-038	Équipement Industriel Champion Inc.	March 25, 1996	Accepted for inquiry/Postponement of award order issued
PR-95-039	Conair Aviation, A division of Conair Aviation Ltd.	March 25, 1996	Accepted for inquiry/Postponement of award order issued
PR-95-040	ISM Information Systems Management Corporation	March 27, 1996	Being filed

CHAPTER VII

USE OF ANTI-DUMPING AND COUNTERVAILING MEASURES

Each year since 1990, the Tribunal's research staff has produced studies on the anti-dumping system in Canada. This year, in a paper entitled Canadian & International Use of Anti-Dumping and Countervailing Measures: Data Update 1988-1994, the Research Branch updated the estimates of imports affected by anti-dumping measures contained in a 1995 staff working paper (Canadian & International Use of Anti-Dumping and Countervailing Measures, July 1995). In addition, this paper includes Canadian imports affected by countervailing duty measures and thereby brings the domestic overview in line with data provided at the international level. A summary of the paper follows.

In 1994, there were 37 injury findings in force in Canada covering 95 countries. In that year, the Tribunal issued 4 injury findings covering 18 countries. Two of the new findings concerned anti-dumping measures respecting hot-rolled carbon steel plate and corrosion-resistant steel sheet products imported from 15 countries. In addition, the Tribunal rescinded 5 findings affecting imports from 9 countries, of which 4 of the findings covered products originating in the United States. The data also now include 4 countervailing duty findings issued prior to 1994.

Canadian Anti-Dumping and Countervailing Measures, 1988-94

Year ²	Actions ¹		Findings ¹ In Place (Dec. 31)
	Added	Expired/ Rescinded	
1988	3	22	64
1989	2	14	59
1990	10	60	38
1991	12	17	35
1992	4	7	33
1993	16	0	38
1994	18	9	37

1. Actions are measured on a country-specific basis. Findings include a number of actions on the same product. For example, the Tribunal finding in Inquiry No. NQ-89-003, *Women's Footwear*, represents six actions: one each for Brazil, the People's Republic of China, Poland, Romania, Taiwan and Yugoslavia.

2. Counting convention: the first year of a measure is the year of the preliminary determination; the last is the year prior to the year in which the measure was rescinded or expired.

Source: Tribunal Research Branch Data Base.

As a result of the 1994 injury findings, an additional \$161 million of imports were affected by the new anti-dumping measures in that year. However, the rescission of findings in 1994 resulted in the removal of anti-dumping duties on imports valued at \$40 million.

Imports of primary metals, textiles and leather goods continue to be the major product categories affected by Canadian anti-dumping and countervailing measures. These three product categories accounted for 61 percent of the total value of imports during the 1988-94 period. The average proportion of imports covered by these measures has changed little since the previous report and continues at 0.6 percent of total manufactured and agricultural imports.

Canadian Imports Affected by Anti-Dumping and Countervailing Measures, 1988-94

(\$000)

Year	Total Imports (1)	Added by New Inquiries (2)	Rescinded and Expired (3)	Value of Imports Affected		As a Percentage of Total Imports (6)
				Change in Import Value for Findings in Place (4)	Total (5)	
1988	94,147,427	21,267	436,633	233,803	744,111	0.79
1989	120,771,230	462	12,691	406,116	1,137,998	0.94
1990	120,821,268	199,235	806,257	(2,824)	528,152	0.44
1991	120,362,894	328,285	56,035	(44,890)	755,512	0.63
1992	132,128,011	104,001	70,512	(67,531)	721,470	0.55
1993	152,102,323	149,489	0	(6,111)	864,848	0.57
1994	181,612,512	161,012	39,601	50,936	1,037,195	0.57
Average 1988-94	131,706,524	137,679	203,104	81,357	827,041	0.63

Notes:

1. Column 5 end of period equals column 5 for the previous year plus column 2 minus column 3 plus column 4.
2. Column 6 equals column 5 divided by column 1.

Source: Tribunal Research Data Base and Statistics Canada.

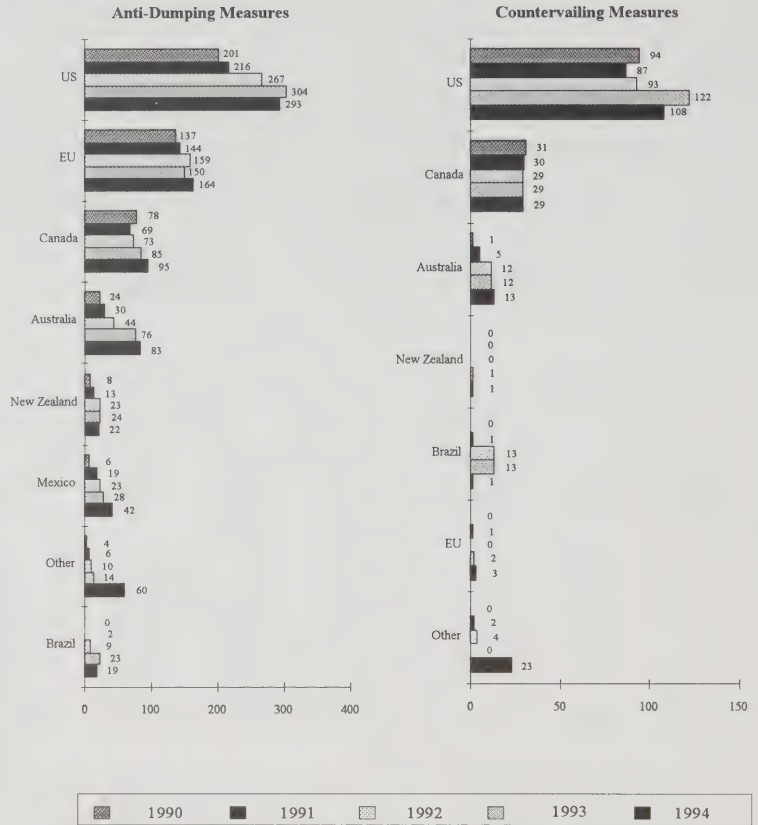
Imports by country indicate that U.S. imports represented 66.9 percent of all imports into Canada over the 1988-94 period, but accounted for only 38.5 percent of all imports affected by anti-dumping and countervailing measures, up from 33.3 percent in the 1995 report. While the U.S. imports accounted for approximately two thirds of all imports into Canada during the 1988-94 period, at \$616 billion, only 0.36 percent of these imports were affected by anti-dumping and countervailing measures.

Measures in Force by GATT Signatories

The number of anti-dumping measures in force by GATT (the World Trade Organization since January 1, 1995) signatories increased from 704 to 778 between 1993 and 1994. Most of the increase is represented by the growing use of anti-dumping measures by countries grouped as "Other" in the following graph. These countries include Turkey, India, the Republic of Korea, Argentina and Mexico.

The number of countervailing measures in force declined from 179 in 1993 to 178 in 1994. During these two years, the United States accounted for two thirds of all measures in force by GATT signatories, although the number of U.S. actions declined by 14. However, this decline was offset by the addition of 23 new actions which came into force by countries grouped as "Other" in the following graph. Venezuela accounted for 22 of the new countervailing actions in 1994.

Number of Measures in Force by GATT Signatories, 1990-94



Source: GATT semi-annual reports and published reports by national authorities.

PUBLICATIONS

June 1995

Annual Report for the Fiscal Year Ending March 31, 1995

September 1994

Textile Reference Guide

November 1995

Textile Reference: Annual Status Report

January 1996

Procurement Review Process — A Descriptive Guide

Bulletin

Vol. 7, Nos. 1 - 4

Pamphlets

A series of pamphlets designed to inform the public of the work of the Tribunal are available. Pamphlets in the series include:

- Introduction to the Canadian International Trade Tribunal
- Appeals from Customs and Excise Decisions
- Dumping and Subsidizing Injury Inquiries
- Import Safeguard Complaints by Domestic Producers
- Import Safeguard Complaints Concerning the General Preferential Tariff (GPT) or CARIBCAN
- General Inquiries into Economic, Trade and Tariff Matters

Publications can be obtained through the Tribunal by contacting the Secretary, Canadian International Trade Tribunal, Standard Life Centre, 333 Laurier Avenue West, Ottawa, Ontario K1A 0G7 (613) 993-3595.

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CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



ANNUAL REPORT

1996-97

June 1997

FOR THE FISCAL YEAR ENDING
MARCH 31, 1997

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 1997**

**Canadian
International
Trade Tribunal**

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June 30, 1997

The Honourable Paul M. Martin, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 1997.

Yours sincerely,



Patricia M. Close
Acting Chairman

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FIGURE

Number of Measures in Force by
WTO Members, 1990-95

CHAPTER I

TRIBUNAL HIGHLIGHTS 1996-97

Appointment of Members

On January 1, 1997, Dr. Patricia M. Close was appointed Vice-Chair of the Canadian International Trade Tribunal (the Tribunal). Prior to her appointment, she was Director of the Tariffs Division at the Department of Finance. Dr. Close has also held various senior positions with the departments of Industry, Natural Resources and Finance, the Bank of Montreal and Petro-Canada on executive interchanges.

Mr. Robert C. Coates, Q.C., was re-appointed to the position of Member of the Tribunal, and Messrs. Arthur B. Trudeau and Charles A. Gracey were appointed as temporary members.

Dumping and Subsidizing Injury Inquiries and Reviews

The Tribunal initiated four injury inquiries. As of the end of the fiscal year, findings had been issued in two inquiries. The Tribunal also initiated five reviews of earlier injury findings. It issued three decisions, and two reviews were still in progress at the end of fiscal year 1996-97.

Appeals of Decisions of the Department of National Revenue

The Tribunal issued decisions on 158 appeals from decisions of the Department of National Revenue (Revenue Canada) made under the *Customs Act*, the *Excise Tax Act* and the *Special Import Measures Act* (SIMA).

The Tribunal implemented a number of measures to improve the case management of appeals. The use of teleconferences to deal with preliminary matters and the more systematic review of requests for postponement have helped the Tribunal to deal with files and bring appeals to the hearing stage more expeditiously.

The appointment of one member, at times, to hear appeals of Revenue Canada decisions under the *Customs Act* and some provisions of the *Excise Tax Act* and hearings by way of videoconferencing have allowed the Tribunal to deal more promptly with appeals.

Trade and Tariff References

Pursuant to a reference from the Minister of Finance dated July 6, 1994, the Tribunal investigates requests from domestic producers for tariff relief on imported textile inputs and makes recommendations in respect of those requests to the Minister of Finance. During fiscal year 1996-97, the Tribunal issued 23 reports to the Minister of Finance, covering 56 requests for tariff relief.

Revised terms of reference were issued to the Tribunal by the Minister of Finance on July 24, 1996, and a revised *Textile Reference Guide* was issued in October 1996.

In addition, the Tribunal's second annual status report on the investigation process was submitted to the Minister of Finance on November 29, 1996.

Procurement Review

The Tribunal provides an opportunity for redress for potential suppliers concerned about the propriety of the procurement process relative to contracts covered by the *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (the AIT) and the World Trade Organization (WTO) *Agreement on Government Procurement*.

The Tribunal issued 12 written determinations of its findings and recommendations. In 5 of the 12 written decisions, the complaints were determined to be valid or valid in part. In one case, File No. PR-95-023 (Array Systems Computing Inc.), the Department of Public Works and Government Services decided not to implement the Tribunal's recommendations.

Review of SIMA

The Chairman of the Tribunal appeared before the Sub-Committee on the Review of SIMA of the Standing Committee on Finance and the Sub-Committee on Trade Disputes of the Standing Committee on Foreign Affairs and International Trade.

On December 11, 1996, the Sub-Committees tabled their joint report on SIMA. The report includes a number of recommendations that would directly affect the operations of the Tribunal.

Free Trade Agreements with Israel and Chile

In 1996, Canada entered into free trade agreements with Israel and Chile. As a result of the *Canada-Israel Free Trade Agreement Implementation Act*, the *Canadian International Trade Tribunal Act* (the CITT Act) was amended in the area of safeguards. When the *Canada-Chile Free Trade Agreement Implementation Act* comes into force, the CITT Act will be further amended to reflect similar changes.

Inquiry Process Under SIMA

The Tribunal completed its review of the inquiry process under SIMA. The Tribunal decided to proceed with a number of changes to existing procedures and applied them for the first time in the polyiso insulation board case (Inquiry No. NQ-96-003). The changes were summarized in a discussion paper issued in November 1996.

Canadian International Trade Tribunal Rules

The Tribunal is pursuing its review of the *Canadian International Trade Tribunal Rules* (Tribunal's Rules of Procedure) with a view toward amending and augmenting its rules, where necessary, to make them more efficient and to reflect technological innovations that may have an impact on the Tribunal's procedures.

New Brochure and Information Documents

The Tribunal published a brochure entitled "Introductory Guide on the Canadian International Trade Tribunal." This brochure is part of a series of documents that provide more detailed information on dumping and subsidizing inquiries and reviews, appeals from customs, excise and SIMA decisions, textile tariff investigations and procurement review.

Tribunal's Web Site

In September 1996, the Tribunal launched its Web site (www.citt.gc.ca). This service complements the Tribunal's electronic bulletin board service and Factsline system and is aimed at allowing users a more timely and convenient access to Tribunal publications, decisions, documents, etc.

Tribunal's Caseload in Fiscal Year 1996-97

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated	Cases Outstanding (March 31, 1997)
SIMA ACTIVITIES						
Injury Inquiries	3	4	7	5	-	2
Injury Reviews	3	5	8	6	-	2
Expiries ¹	1	8	9	5	1	3
References (Advice)	-	2	2	1	-	1
APPEALS						
<i>Customs Act</i>	378	205	583	114 ²	138	331
<i>Excise Tax Act</i>	417	25	442	38	150	254
SIMA	109	12	121	6	63	52
Total	904³	242	1146	158	351	637
TEXTILE REFERENCE						
Requests for Tariff Relief	58	16 ⁴	74	57 ⁵	7	10
PROCUREMENT REVIEW ACTIVITIES						
Complaints	8	41	49	12	28	9

1. As a result of a different method of reporting expiries, the first column refers to expiries for which decisions on whether or not to review had not been made prior to the end of the previous fiscal year. The fourth column refers to decisions to review.

2. This figure includes 60 eyewear appeals for which decisions on jurisdiction were issued.

3. Many of these cases were being held in abeyance, upon request of the parties, pending decisions by the Federal Court of Canada or the Tribunal on similar issues.

4. Includes the reference from the Minister of Finance (TR-95-056A).

5. The Tribunal actually issued 23 reports to the Minister of Finance which related to 56 requests for tariff relief, plus the reference from the Minister of Finance.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the CITT Act, the *Canadian International Trade Tribunal Regulations* (the CITT Regulations), the Tribunal's Rules of Procedure, SIMA, the *Customs Act* and the *Excise Tax Act*.

Mandate

The Tribunal's mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry;
- hear appeals of Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations;
- conduct inquiries into complaints by potential suppliers concerning procurement by the federal government that is covered by NAFTA, the AIT and the *WTO Agreement on Government Procurement*;
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance.

Method of Operations

In carrying out most of its responsibilities, the Tribunal conducts hearings that are open to the public. These are normally held in Ottawa, Ontario, the location of the Tribunal's offices, although hearings may also be held elsewhere in Canada. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, conducted generally by a panel of three members, should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information, even when it is commercially confidential. The CITT Act contains provisions that strictly control access to confidential information.

The Tribunal's decisions may be reviewed by or appealed to, as appropriate, the Federal Court of Canada and, ultimately, the Supreme Court of Canada, or a binational panel under NAFTA, in the case of a decision affecting US and/or Mexican interests. Governments that are members of the WTO may appeal the Tribunal's decisions to a dispute settlement panel under the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.

Membership

The Tribunal may be composed of nine full-time members, including a Chairman and two Vice-Chairs, who are appointed by the Governor in Council for a term of up to five years. A maximum of five additional members may be temporarily appointed. The Chairman is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently 8 in number, are supported by a permanent staff of 87 people. Its principal officers are the Executive Director, Research, responsible for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; the Secretary, responsible for administration, relations with the public, dealings with other government departments and other governments, and the court registrar functions of the Tribunal; the General Counsel, responsible for the provision of legal services to the Tribunal; and the Director of the Procurement Review Division, responsible for the investigation of complaints by potential suppliers concerning any aspect of the procurement process.

Organization

CHAIRMAN

Anthony T. Eyton

VICE-CHAIRS

Raynald Guay
Patricia M. Close

MEMBERS

Arthur B. Trudeau*
Robert C. Coates, Q.C.
Lyle M. Russell
Anita Szlajak
Charles A. Gracey*

SECRETARIAT

Secretary
Michel P. Granger

RESEARCH BRANCH

Executive Director of Research
Ronald W. Erdmann

PROCUREMENT REVIEW DIVISION

Director
Jean Archambault

LEGAL SERVICES BRANCH

General Counsel
Gerry Stobo

* Temporary Member

Parliamentary Report on SIMA

On December 11, 1996, the Sub-Committee on the Review of SIMA of the Standing Committee on Finance and the Sub-Committee on Trade Disputes of the Standing Committee on Foreign Affairs and International Trade tabled their joint report on SIMA. The Sub-Committees were asked by the Minister of Finance, on May 17, 1996, to review SIMA and to advise the Government if any changes should be made to the legislation. In their final report, the Sub-Committees recommended the following changes (among others) that would directly affect the operations of the Tribunal.

- The Tribunal should be given the responsibility for making the preliminary determination of injury.
- (Independent) experts should be permitted access to confidential information in SIMA proceedings before the Tribunal.
- Dumping in third country markets should be included in the *Special Import Measures Regulations* as a factor in assessing the evidence of threat of injury.
- Cumulation should be made mandatory in the Tribunal's procedures for determining injury.
- The difference between interim and expiry reviews should be clarified.
- The administrative responsibilities for conducting reviews should be bifurcated (between Revenue Canada and the Tribunal).
- The Tribunal should be required to assess the cumulative injurious effects of dumping/subsidizing in conducting interim and expiry reviews.
- A non-exclusive list of factors should be added to section 45 to guide the Tribunal respecting whether and how to conduct a public interest inquiry.
- The Tribunal's decision that an anti-dumping or countervailing duty might not be in the public interest should be a formal decision reviewable by the Federal Court of Canada.
- The WTO "lesser duty" concept should be incorporated into the public interest provisions of SIMA.

All of these recommendations, except for the Sub-Committees' recommendation that the Tribunal's public interest decisions should be reviewable by the Federal Court of Canada, were supported by the Government.

**Impact of the
Canada-Israel
Free Trade
Agreement and
the Canada-Chile
Free Trade
Agreement on
Tribunal Activities**

In 1996, Canada entered into free trade agreements with Israel and Chile. On January 1, 1997, the *Canada-Israel Free Trade Agreement Implementation Act* came into force. As a result, the CIIT Act was amended in the area of safeguards. Global safeguard inquiries in respect of goods imported from Israel can now be conducted by the Tribunal. Furthermore, the Tribunal must exclude these goods from any global safeguard action unless they account for a substantial share of imports and contribute importantly to the serious injury. When the *Canada-Chile Free Trade Agreement Implementation Act* comes into force, the CIIT Act will be further amended in the area of safeguards to reflect similar changes. In addition, SIMA will be amended to reflect the agreement between Chile and Canada not to apply domestic anti-dumping laws to goods of the other party.

**Inquiry Process
under SIMA**

In the fall of 1994, the Chairman of the Tribunal set up a staff committee to conduct a fundamental review of Tribunal procedures in injury inquiries under section 42 of SIMA. The committee was mandated to examine ways and means of making the injury inquiry process less costly and less cumbersome, while still preserving fairness. In carrying out its mandate, the committee engaged in wide-ranging consultations both inside and outside the Tribunal.

In the spring of 1996, the committee prepared a discussion paper which identified key issues and questions which needed to be addressed. The paper was distributed for comments to The Canadian Bar Association, members of the trade bar, trade and industry associations, Revenue Canada, the Department of Finance, the Bureau of Competition Policy and other Tribunal stakeholders. The responses received indicated that, on many key issues, there was no clear consensus. However, the responses, as a whole, provided valuable input to the committee's deliberations.

Following these consultations, in the fall of 1996, the committee prepared a series of recommendations for consideration by the Tribunal. Based on these recommendations, the Tribunal decided, in November 1996, to proceed with a number of changes to existing procedures. The thrust of these changes is to:

- ensure that staff research is as focused and relevant as possible by seeking input from parties and their counsel on the design of the Tribunal's survey questionnaires in advance of their distribution;

-
- advance the inquiry schedule so that, generally, information is received and distributed earlier, so that issues arising therefrom may be identified and dealt with, to the extent possible, prior to the hearing;
 - provide for key evidence, such as that for specific injury allegations, to be submitted at a time and in a form and manner which allow parties subject to the allegations to have a fair and full opportunity to respond prior to the hearing; and
 - reduce the incidence of excessively long hearings.

The procedural changes were made initially for inquiries under section 42 of SIMA. A number of changes were applied for the first time in the polyiso insulation board case. The Tribunal is implementing similar procedural and scheduling changes, with appropriate modifications, for reviews under section 76 of SIMA.

These changes, as a whole, are intended to foster a process whereby parties' positions are more fully documented prior to the hearing and parties are more fully informed of each other's position. To the extent that this can be achieved, scarce and costly hearing time can be used to focus on the key issues in dispute in an efficient and effective manner.

Guidelines and practice notices providing specific details on the proposed changes will be issued, as required. Some of the changes may eventually be incorporated into the Tribunal's Rules of Procedure.

Legislative Mandate of the Tribunal

Section	Authority
CITT Act	
18	Inquiries on Economic, Trade or Commercial Interests of Canada by Reference from the Governor in Council
19	Inquiries Into Tariff-Related Matters by Reference from the Minister of Finance
19.01	Safeguard Inquiries Concerning Goods Imported from the United States and Mexico
19.02	Mid-Term Reviews of Safeguard Measures and Report
20	Safeguard Inquiries Concerning Goods Imported Into Canada and Inquiries Into the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
23(1.01) and (1.02)	Safeguard Complaints by Domestic Producers Concerning Goods Imported from the United States and Mexico
30.08 and 30.09	Extension Inquiries of Safeguard Measures and Report
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts
SIMA (Anti-Dumping and Countervailing Duties)	
33, 34, 35 and 37	Advice to Deputy Minister
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
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CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

Inquiries

Under SIMA, Canadian producers may have access to measures to offset unfair and injurious competition from goods exported to Canada:

- 1) at prices lower than sales in the home market or lower than the cost of production (dumping), or
- 2) that have benefited from certain types of government grants or other assistance (subsidizing).

The determination of dumping and subsidizing is the responsibility of Revenue Canada, while the determination of whether such dumping or subsidizing has caused “material injury” or “retardation” or is threatening to cause material injury to a domestic industry is the Tribunal’s responsibility.

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Deputy Minister of National Revenue (the Deputy Minister). The Tribunal commences its inquiry at the stage of the issuance of a preliminary determination of dumping or subsidizing by the Deputy Minister. Revenue Canada levies provisional duties with the issuance of the preliminary determination.

In conducting its inquiries, the Tribunal tries to ensure that all interested parties are made aware of the inquiry. It issues a notice of commencement of inquiry that is published in the *Canada Gazette* and forwarded to all known interested parties. It also requests information from interested parties, receives representations and holds public hearings. Parties participating in these proceedings may conduct their own cases or be represented by counsel.

The Tribunal staff carries out extensive research for each inquiry to serve the Tribunal’s need for relevant information. The Tribunal staff sends questionnaires to manufacturers, importers and purchasers. The data that emerge from the questionnaire responses form the basis of staff reports that focus on the factors to be examined by the Tribunal in arriving at decisions regarding material injury or retardation or threat of material injury to a domestic industry. These reports become part of the case record and are made available to counsel and participants

**Inquiries
Completed
in 1996-97**

in inquiries. Information that is confidential or business-sensitive is protected in accordance with provisions of the CIIT Act. Only independent counsel who have filed declarations and undertakings may have access to such confidential information.

The CIIT Regulations prescribe factors that may be considered in the Tribunal's determination of whether the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. These factors include, among others, the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on prices and the impact of the dumped or subsidized goods on production, sales, market shares, profits, employment and utilization of production capacity.

At the public hearing, the domestic producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused material injury or retardation or that it is threatening to cause material injury to a domestic industry. The domestic producers' case is usually challenged by importers and, sometimes, by exporters. After cross-examination by parties and then examination by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. Parties may also seek exclusions from the finding, should the Tribunal make a finding of material injury or retardation or threat of material injury to a domestic industry. In many cases, the Tribunal calls witnesses who are knowledgeable about the industry and market in question.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Deputy Minister. The Tribunal has an additional 15 days to issue a statement of reasons explaining its finding (section 43 of SIMA). A Tribunal finding of material injury or retardation or threat of material injury to a domestic industry results in the imposition of anti-dumping or countervailing duties by Revenue Canada, should the price of imports exceed the normal values.

The Tribunal completed five inquiries under section 42 of SIMA in fiscal year 1996-97. Inquiry No. NQ-95-003 dealt with dry pasta, a food product. Inquiry No. NQ-95-004 dealt with bacteriological culture media, a clinical laboratory product. Two inquiries concerned stationery products: Inquiry No. NQ-95-005 which dealt with portable file cases and Inquiry No. NQ-96-001 which dealt with refill paper and spiral-bound notebooks. The fifth, Inquiry No. NQ-96-002, dealt with fresh garlic, an agricultural product. In 1995, the Canadian market for dry pasta exceeded \$100 million, while that for each of the other products was less than \$20 million.

Dry Pasta

NQ-95-003

The Tribunal found that dumped and subsidized imports of dry pasta from Italy had not caused and were not threatening to cause material injury to the domestic industry. Canadian pasta manufacturers alleged that they had suffered material injury in the form of price suppression, price erosion, lost sales, loss of market share and significant financial losses. Although the Tribunal found material injury, it was of the opinion that there were a number of important factors unrelated to competition from Italian imports that appeared to have contributed to this situation. In addition, the Tribunal found that it was premium Italian brands that had captured the growth in the 450/500-g package size segment of the dry pasta market. The Tribunal noted that price suppression in the 900-g package size segment of the market appeared to be attributable to other factors and that Italian imports accounted for only a small part of this market. While recognizing that dry pasta from Italy would continue to be present in the domestic market, the Tribunal did not consider that there was an imminent threat of injury.

Bacteriological Culture Media

NQ-95-004

Bacteriological culture media (BCM) is produced and sold in two distinct forms. Accordingly, the Tribunal considered the question of injury from dumped imports from the United Kingdom and the United States separately for each class of BCM. In the case of dehydrated BCM, the Tribunal found that, although dumped imports had taken part of the market, other factors had caused the injury to the industry. Because of various considerations, including a decline in dumped imports, the Tribunal concluded that there was no threat of material injury to the domestic industry.

In the case of prepared BCM, the Tribunal also concluded that dumped imports from the United States had not caused and were not threatening to cause material injury to the domestic industry. The Tribunal was not convinced that there had been price suppression nor that the sales that the industry had lost could be attributed to dumped imports. In addition, there was no indication that dumped imports would cause injury in the future.

Portable File Cases

NQ-95-005

The Tribunal found that dumped imports of portable file cases from the People's Republic of China had not caused and were not threatening to cause material injury to the domestic industry. Moreover, the Tribunal found that there was no basis in SIMA for the industry's claim of retardation. Although it was clear from the evidence that the domestic industry had suffered material injury, primarily in the form of financial injury, the Tribunal noted that numerous other factors had intervened to affect its performance. In particular, the Canadian market had undergone fundamental changes at the retail level which resulted in the repositioning of portable file cases for sale to consumers. Finally, the Tribunal saw no change in circumstance in the immediate future which would create a threat of material injury.

**Refill Paper and
Spiral-Bound
Notebooks**

NQ-96-001

As refill paper and spiral-bound notebooks are distinct products, the Tribunal considered the question of injury from dumped imports separately for each product. Despite a large loss of market share to imports of refill paper from Indonesia, the Tribunal could not attribute the injury suffered by the domestic industry to dumping. Indonesian sales to large Canadian retail accounts represented virtually all the market share lost by the domestic industry in 1995. However, these imports were found by the Deputy Minister to be undumped. There was, moreover, no evidence to indicate a likelihood of substantially increased dumped imports. The Tribunal, therefore, could not find a threat of injury due to dumped imports.

In the case of spiral-bound notebooks, the Tribunal also concluded that dumped imports from both Indonesia and Brazil had not caused and were not threatening to cause material injury to the domestic industry. Despite a large increase in imports from Indonesia, the Tribunal was not convinced that dumping had caused injury to the domestic industry. Sales of these imports were either well above the domestic industry's selling prices or found to be undumped. Imports from Brazil had not been a competitive factor in the market. Because the evidence showed that the level of imports from Indonesia was likely to decline and that most other imports were not found to be dumped, the Tribunal did not find a threat of material injury to the domestic industry. In the case of Brazil, the Tribunal observed that, because of declining volumes and competitive shortcomings of imports from Brazil, there was no indication of an imminent and foreseeable threat of material injury.

Fresh Garlic

NQ-96-002

The Tribunal found that dumped imports of fresh garlic from the People's Republic of China had caused injury to domestic growers. The Tribunal found that, while domestic growers were increasing acreage planted and volume harvested, imports from the People's Republic of China were growing rapidly, thereby preventing the industry from gaining market share in the fresh bulk market and causing growers to divert production to the seed market. The dumped Chinese imports also caused price erosion in the Canadian market. The Tribunal concluded that the domestic industry had the ability to increase production to meet a much greater proportion of demand for fresh garlic during the period from July to December of each year.

**Inquiries in
Progress at the
End of 1996-97**

There were two inquiries in progress at the end of 1996-97: *Polyiso Insulation Board* (Inquiry No. NQ-96-003), with respect to dumped imports from the United States, and *Concrete Panels* (Inquiry No. NQ-96-004), with respect to dumped imports from the United States into British Columbia and Alberta. In the two cases, the Tribunal applied its new procedures.

Table 1 summarizes the Tribunal's inquiry activities during the fiscal year.

Public Interest Consideration Under Section 45 of SIMA

Where, as a result of an injury inquiry, the Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties may not be in the public interest, it reports this to the Minister of Finance with a statement of the facts and reasons that led to its conclusions. The Minister of Finance then decides whether there should be any reduction in duties. During the inquiry, interested parties may make a request to make representations on the matter of public interest. If the Tribunal decides to hear public interest representations, it does so after the injury inquiry, following guidelines established in fiscal year 1994-95.

During 1996-97, the Tribunal completed a public interest investigation with respect to its finding of threat of material injury in the case of *Refined Sugar* (Inquiry No. NQ-95-002). The Tribunal issued a consideration (Public Interest Investigation No. PB-95-002), in which it stated that the public interest did not warrant the reduction or elimination of the duties and that, therefore, it would not report to the Minister of Finance under section 45 of SIMA. In one inquiry, the question of public interest was raised. As of March 31, 1997, the Tribunal had yet to give its view as to whether consideration of the public interest question was warranted.

Reviews

The Tribunal may review its findings of injury or orders at any time, on its own initiative or at the request of the Deputy Minister or any other person or government. Subsection 76(5) of SIMA provides for a finding or an order to lapse five years after the date of issuance, unless a review has been initiated. It is Tribunal policy to notify parties nine months prior to the expiry date of a finding or an order. If a review is requested, the Tribunal will initiate one if it determines that it is warranted.

During the 1996-97 fiscal year, the Tribunal issued eight notices of expiry. They concerned findings and orders for the following products: aluminum coil stock and steel head and bottom rails, twisted polypropylene and nylon rope, toothpicks, machine tufted carpeting, yellow onions, rubber footwear, Iceberg lettuce, and bicycles and frames. The Tribunal decided that a review of the finding respecting toothpicks was not warranted, and the finding has expired. Reviews were initiated in five cases, including the case for which a notice of expiry had been issued in the previous fiscal year. Decisions on review for rubber footwear, Iceberg lettuce and bicycles and frames were pending at the end of the fiscal year.

Interested parties may also request a review at any time, pursuant to subsection 76(2) of SIMA. However, the Tribunal will initiate a review only if it determines that one is warranted, usually on the basis of changed circumstances. During the last fiscal year, the Tribunal decided that a request to review its findings on refined sugar was not warranted (Request for Review No. RD-95-001).

Reviews Completed in 1996-97

Reviews in Progress at the End of 1996-97

The purpose of a review is to determine if anti-dumping or countervailing duties remain necessary. In the case of reviews upon expiry, the Tribunal assesses whether dumping is likely to resume or subsidizing is likely to continue and, if so, whether the dumping or subsidizing is likely to cause material injury to a domestic industry. In a review on the grounds of changed circumstances, the Tribunal determines if the changed circumstances are such that the finding remains necessary. Review procedures are similar to those in an injury inquiry.

Upon completion of a review, the Tribunal issues an order with reasons, pursuant to subsection 76(4) of SIMA, much as in the case of an injury inquiry. The Tribunal may rescind or continue a finding or an order with or without amendment. If the finding or order is rescinded, imports are no longer subject to anti-dumping or countervailing duties. If the Tribunal continues a finding or an order, it remains in force for a further five years unless it is reviewed again.

In fiscal year 1996-97, the Tribunal completed six reviews. The order and findings in *Oil and Gas Well Casing* (Review No. RR-95-001), with respect to dumped imports originating in the Republic of Korea and the United States, *Carbon Steel Welded Pipe* (Review No. RR-95-002), with respect to dumped imports from Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil, and *Stainless Steel Welded Pipe* (Review No. RR-96-001), with respect to dumped imports from Taiwan, were continued without amendment. The orders and finding in *Boneless Manufacturing Beef* (Review No. RR-95-003), with respect to subsidized imports from the European Union, *Aluminum Coil Stock and Steel Head and Bottom Rails* (Review No. RR-96-002), with respect to dumped imports from Sweden, and *Twisted Polypropylene and Nylon Rope* (Review No. RR-96-003), with respect to dumped imports from the Republic of Korea, were rescinded.

Two reviews were in progress at the end of the fiscal year. They were *Machine Tufted Carpeting* (Review No. RR-96-004), with respect to dumped imports from the United States, and *Yellow Onions* (Review No. RR-96-005), with respect to dumped imports from the United States into British Columbia.

Table 2 summarizes the Tribunal's review activities during the fiscal year. Table 3 lists findings and orders in force as of March 31, 1997.

Advice Given Under Section 37 of SIMA

When the Deputy Minister decides not to initiate a dumping or subsidizing investigation because there is insufficient evidence of injury, the Deputy Minister or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Deputy Minister discloses a reasonable indication that the dumping or subsidizing has caused material injury or retardation or is threatening to cause material injury to a domestic industry. When the Deputy Minister decides to initiate an investigation, a similar recourse is available to the Deputy Minister or any person or government under section 34 of SIMA.

Section 37 of SIMA requires that the Tribunal render its advice on the issue within 30 days, without holding a hearing, on the basis of the information before the Deputy Minister when the decision regarding initiation was reached.

The Tribunal issued one advice during 1996-97. It concerned *Polyiso Insulation Board* (Reference No. RE-96-001). The Tribunal concluded that the evidence disclosed a reasonable indication that the dumping or subsidizing had caused material injury or was threatening to cause material injury to a domestic industry. The case subsequently proceeded to an inquiry under section 42 of SIMA. The case was in progress at the end of the fiscal year.

Judicial or Panel Review of SIMA Decisions

Anti-dumping and countervailing duty decisions can be judicially reviewed by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law.

In cases involving goods from the United States and Mexico, parties may request judicial review by the Federal Court of Canada or by a binational panel.

Table 4 lists the Tribunal's decisions under section 43 or 76 of SIMA that were before the Federal Court of Canada for judicial review in fiscal year 1996-97. There were no cases before a binational panel. The Federal Court of Canada set aside the Tribunal's finding of no material injury in the case of *Dry Pasta* (Inquiry No. NQ-95-003). The Tribunal has recommenced an inquiry under section 44 of SIMA. The Federal Court of Canada dismissed applications to review the Tribunal's decisions not to review its findings in *Refined Sugar* (Public Interest Investigation No. PB-95-002 and Request for Review No. RD-95-001).

WTO Dispute Resolution

Governments that are members of the WTO may appeal Tribunal injury findings or orders in anti-dumping and countervailing cases to the WTO. The launching of an appeal must be preceded by inter-governmental consultations. There are no appeals of Tribunal findings or orders before the appeal instances of the WTO.

TABLE 1

**Findings Issued Under Section 43 of SIMA Between April 1, 1996, and March 31, 1997,
and Inquiries Under Section 42 of SIMA in Progress at Year End**

Inquiry No.	Product	Country	Date of Finding	Finding
NQ-95-003	Dry Pasta	Italy	May 13, 1996	No Injury or Threat of Injury
NQ-95-004	Bacteriological Culture Media	United States and United Kingdom	May 31, 1996	No Injury or Threat of Injury
NQ-95-005	Portable File Cases	People's Republic of China	June 4, 1996	No Injury, Retardation or Threat of Injury
NQ-96-001	Refill Paper and Spiral-Bound Notebooks	Republic of Indonesia and Federative Republic of Brazil	September 27, 1996	No Injury or Threat of Injury
NQ-96-002	Fresh Garlic	People's Republic of China	March 21, 1997	Injury
NQ-96-003	Polyiso Insulation Board	United States	In Progress	
NQ-96-004	Concrete Panels	United States	In Progress	

TABLE 2**Orders Issued Under Section 76 of SIMA Between April 1, 1996, and March 31, 1997,
and Reviews in Progress at Year End**

Review No. or Expiry No.	Product	Country	Date of Order	Order
RR-95-001	Oil and Gas Well Casing	Republic of Korea and United States	July 5, 1996	Order Continued
RR-95-002	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil	July 25, 1996	Findings Continued
RR-95-003	Boneless Manufacturing Beef	European Union	July 22, 1996	Order Rescinded
RR-96-001	Stainless Steel Welded Pipe	Taiwan	September 12, 1996	Finding Continued
RR-96-002	Aluminum Coil Stock and Steel Head and Bottom Rails	Sweden	February 6, 1997	Finding Rescinded
RR-96-003	Twisted Polypropylene and Nylon Rope	Republic of Korea	February 21, 1997	Order Rescinded
LE-96-003	Toothpicks	United States	October 22, 1996	Review not Warranted
RR-96-004	Machine Tufted Carpeting	United States	In Progress	
RR-96-005	Yellow Onions	United States	In Progress	

TABLE 3

Findings and Orders in Force as of March 31, 1997¹

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-91-006	April 21, 1992	Machine Tufted Carpeting	United States	
RR-91-004	May 22, 1992	Yellow Onions	United States	CIT-1-87 (April 30, 1987)
RR-92-001	October 21, 1992	Waterproof Rubber Footwear	Czechoslovakia, Poland, Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and People's Republic of China	ADT-4-79 (May 25, 1979) ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987)
NQ-92-001	November 30, 1992	Iceberg Lettuce	United States	
NQ-92-002	December 11, 1992	Bicycles and Frames	Taiwan and People's Republic of China	
NQ-92-004	January 20, 1993	Gypsum Board	United States	
RR-92-003	February 25, 1993	Pocket Photo Albums and Refill Sheets	Japan, Republic of Korea, People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and Federal Republic of Germany	CIT-11-87 (February 26, 1988)
NQ-92-007	May 6, 1993	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	
NQ-92-009	July 29, 1993	Cold-Rolled Steel Sheet Products	Federal Republic of Germany, France, Italy, United Kingdom and United States	

1. This table shows the findings and orders in force. To determine the precise product coverage, refer to the Review No. or Inquiry No. as identified in the first column of the table.

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-93-001	October 18, 1993	Copper Pipe Fittings	United States	
NQ-93-002	November 19, 1993	Preformed Fibreglass Pipe Insulation	United States	
RR-93-001	November 23, 1993	Tillage Tools	Brazil	ADT-11-83 (December 28, 1983) R-9-88 (November 24, 1988)
RR-93-003	January 18, 1994	Paint Brushes and "Heads"	People's Republic of China	ADT-6-84 (June 20, 1984) R-7-84 (September 28, 1984) R-13-88 (January 19, 1989)
NQ-93-003	April 22, 1994	Synthetic Baler Twine	United States	
NQ-93-004	May 17, 1994	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	
NQ-93-005	June 22, 1994	12-Gauge Shotshells	Czech Republic and Republic of Hungary	
NQ-93-006	July 20, 1994	Black Granite Memorials and Black Granite Slabs	India	
NQ-93-007	July 29, 1994	Corrosion-Resistant Steel Sheet Products	Australia, Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	
NQ-94-001	February 9, 1995	Delicious and Red Delicious Apples	United States	

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-94-002	March 21, 1995	Canned Ham and Canned Pork-Based Luncheon Meat	Denmark, Netherlands and European Union	GLC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990)
RR-94-003	May 2, 1995	Women's Footwear	People's Republic of China	NQ-89-003 (May 3, 1990)
RR-94-004	June 5, 1995	Carbon Steel Welded Pipe	Republic of Korea	ADT-6-83 (June 28, 1983) RR-89-008 (June 5, 1990)
RR-94-005	July 5, 1995	Refill Paper	Federative Republic of Brazil	NQ-89-004 (July 6, 1990)
RR-94-006	August 25, 1995	Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves	Republic of Korea, Hong Kong, People's Republic of China, Singapore, Malaysia, Taiwan, Indonesia, Thailand and the Philippines	ADT-4-74 (January 24, 1975) R-3-84 (August 24, 1984) CIT-18-84 (April 26, 1985) CIT-10-85 (February 14, 1986) CIT-5-87 (November 3, 1987) RR-89-012 (September 4, 1990) NQ-90-003 (January 2, 1991)
RR-94-007	September 14, 1995	Whole Potatoes	United States	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986) RR-89-010 (September 14, 1990)
NQ-95-001	October 20, 1995	Caps, Lids and Jars	United States	
NQ-95-002	November 6, 1995	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-95-001	July 5, 1996	Oil and Gas Well Casing	Republic of Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986) RR-90-005 (June 10, 1991)
RR-95-002	July 25, 1996	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil	NQ-90-005 (July 26, 1991) NQ-91-003 (January 23, 1992)
RR-96-001	September 12, 1996	Stainless Steel Welded Pipe	Taiwan	NQ-91-001 (September 5, 1991)
NQ-96-002	March 21, 1997	Fresh Garlic	People's Republic of China	

TABLE 4**Cases Before the Federal Court of Canada Between April 1, 1996, and March 31, 1997**

Case No.	Product	Country	File No./ Status
PB-95-002 and RD-95-001	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	A-654-96 and A-524-96 Applications Dismissed
NQ-95-003	Dry Pasta	Italy	A-473-96 Tribunal's Finding Set Aside Matter Referred Back to Tribunal for New Hearing

CHAPTER IV

APPEALS

Introduction

The Tribunal, among its other duties, hears appeals from decisions of the Minister of National Revenue (the Minister) or of the Deputy Minister under the *Excise Tax Act*, the *Customs Act* and SIMA. When the federal sales tax was replaced by the Goods and Services Tax on January 1, 1990, there were a number of appeals awaiting determination by the Deputy Minister and decisions awaiting appeal to the Tribunal. As a result, in the last few years, the majority of appeals heard and decided by the Tribunal involved federal sales tax assessments and determinations. However, as the bulk of these appeals have now made their way through the appeal process at Revenue Canada and the Tribunal, the latter is hearing and deciding more appeals involving tariff classification and value for duty of imported goods under the *Customs Act*. The Tribunal also hears and decides appeals concerning the application, to imported goods, of a Tribunal finding concerning dumping or subsidizing and the normal value or export price or subsidy of imported goods under SIMA.

Although the Tribunal strives to be informal and accessible, there are certain procedures and time constraints that are imposed by law and by the Tribunal itself in order to provide quality service to the public in an efficient manner. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

Under the Tribunal's Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a "brief." Generally, the brief states under which act the appeal is launched, gives an indication of the points at issue between the appellant and the Minister or Deputy Minister (in legal terminology, the Minister or the Deputy Minister is called the respondent) and states why the appellant believes that the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth Revenue Canada's position. Once these formalities are out of the way, the Secretary of the Tribunal contacts both parties in order to schedule a hearing. Hearings are generally conducted in public, before Tribunal members.

Hearings

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their cases. They also enable the Tribunal to have the best information possible to make a decision. As in a court, the appellant and the respondent can call witnesses, and these witnesses are questioned under oath by the opposing parties, as well as by the members, in order to test the validity of their evidence. When all the evidence is gathered, parties may present arguments in support of their respective positions.

The option of a file hearing is also offered to the appellant. Where a hearing is not required, the Tribunal may dispose of the matter on the basis of the written documentation before it. Rule 25 of the Tribunal's Rules of Procedure allows the Tribunal to proceed in this manner. Before deciding to proceed in this manner, the Tribunal requires that the appellant and respondent consent to disposing of the appeal by way of a file hearing and file with the Tribunal an agreed statement of facts in addition to their submissions. The Tribunal then publishes a notice of the file hearing in the *Canada Gazette* so that other interested persons can make their own views known.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute, including the reasons for its decision.

If either the appellant or the respondent disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Canada.

Appeals Considered in the Last Fiscal Year

During the 1996-97 fiscal year, the Tribunal heard 163 appeals of which 129 related to the *Customs Act*, 30 to the *Excise Tax Act* and 4 to SIMA. Decisions were issued in 158 cases, of which 114 were heard during fiscal year 1996-97.

Decisions on Appeals

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	24	6	84	114
<i>Excise Tax Act</i>	6	4	28	38
<i>SIMA</i>	1	1	4	6

The table at the end of this chapter lists decisions on appeals rendered in fiscal year 1996-97.

Summary of Selected Decisions

Of the many cases heard by the Tribunal in carrying out its appeal functions, several decisions stand out from among the others because of the legal significance of the cases. A brief résumé of a representative sample of such cases follows. These summaries have been prepared for general information purposes only and have no legal status.

PMI Food Equipment Group Canada, A Division of Premark Canada Inc. v. The Deputy Minister of National Revenue

AP-95-123

*Decision:
Appeal allowed in part
(January 10, 1997)*

This was an appeal under section 67 of the *Customs Act* in which the Tribunal considered whether Revenue Canada correctly included royalties in the value for duty of certain appliances and parts imported by the appellant. Pursuant to subparagraph 48(5)(a)(iv) of the *Customs Act*, royalties and licence fees, including payments for patents, trade-marks and copyrights, in respect of the imported goods that the purchaser must pay, must be added to the price paid or payable in the sale of the goods for export to Canada. In the present case, Premark Canada Inc. had entered into licence agreements with two US companies (the licensors) granting Premark, among other things, the rights to sell and service certain products in Canada, as well as manufacture certain products in Canada, in exchange for which it paid the licensors a royalty calculated as a percentage of the proceeds of sales and services realized by Premark on all products and services covered by the agreements. No royalty was included in the value for duty of the goods imported by the appellant. Revenue Canada ruled that such portion of the royalties paid by the appellant that could be attributed to the proceeds of the sales of the imported goods had to be included in the value for duty of the goods pursuant to paragraph 48(5)(a)(iv) of the *Customs Act*.

**Toyota Canada Inc. v.
The Deputy Minister
of National Revenue**

AP-95-090 and
AP-95-166

Decision:
Appeals allowed
(August 15, 1996)

The Tribunal allowed the appeal in part. The Tribunal was of the opinion that the royalty payments made by the appellant were “in respect of” the goods, as contemplated by subparagraph 48(5)(a)(iv) of the *Customs Act*. However, the Tribunal found that only the royalties paid in respect of goods purchased from the licensors should be added to the price paid or payable for the goods pursuant to subparagraph 48(5)(a)(iv). In the Tribunal’s view, the licensors were in a position to exert sufficient control over these sales for the payment of the royalties to constitute “a condition of the sale” under subparagraph 48(5)(a)(iv). However, royalties should not be added to the price paid or payable for goods purchased from other related companies and third-party manufacturers, as the licensors did not exert sufficient control or influence over these sales for the payment of any royalties to constitute “a condition of the sale” under subparagraph 48(5)(a)(iv).

The Tribunal’s decision was appealed to the Federal Court of Appeal by both the appellant and the Deputy Minister.

These were appeals under section 67 of the *Customs Act* in which the Tribunal considered whether Revenue Canada had correctly determined the value for duty of imported vehicles by the appellant. The value for duty at the time of importation was based on the invoice price. Subsequently, the invoice price was adjusted to reflect reductions in the final negotiated price and the appellant requested a re-appraisal of the value for duty under section 60 of the *Customs Act* to take into account the price changes. The Deputy Minister found that, in calculating the value for duty, reductions in the final negotiated price issued after the importation of the goods in issue should be disregarded in accordance with paragraph 48(5)(c) of the *Customs Act*. Subsections 48(1) and (5) of the *Customs Act* provide that the value for duty of imported goods is their transaction value or, more precisely, the price paid or payable adjusted by adding and deducting different amounts and, pursuant to paragraph 48(5)(c) of the *Customs Act*, “by disregarding any rebate of, or other decrease in, the price paid or payable for the goods that is effected after the goods are imported.”

The evidence showed that there existed an understanding between the appellant, the manufacturer, Toyota Motor Corporation of Japan, and the exporter, Mitsui & Co., Ltd., that the price stipulated on the Canada Customs Invoice was a provisional price estimated for purposes of calculating the value for duty and that the final selling price of the vehicles would only be known at the conclusion of the negotiations. The Tribunal found that the credit note given by Mitsui & Co., Ltd. to the appellant did not constitute a rebate of, or other decrease in, the price paid or payable for the goods in issue within the meaning of paragraph 48(5)(c) of the *Customs Act*. In the Tribunal’s view, the purpose of the credit note was not to give the appellant a rebate nor to decrease the price paid or payable for the vehicles, but simply to reflect the actual selling price of the goods

in issue. In reaching its conclusion, the Tribunal relied on the decision of the Federal Court of Canada - Trial Division in *Nordic Laboratories v. The Deputy Minister of National Revenue* and the discussion in that case of the Tribunal's decision in *Quadra Chemicals Ltd. v. The Deputy Minister of National Revenue*.

The Tribunal's decision was appealed to the Federal Court of Appeal by the Deputy Minister.

In the past fiscal year, the Tribunal dismissed a series of appeals on the basis that it did not have jurisdiction to hear them. Sixty of these appeals dealt with the importation of eyewear material. One appeal, *Fisher Scientific Ltd. v. The Deputy Minister of National Revenue*, dealt with the importation of goods described as "automated immunoassay systems" or "ALA-Pack" test kits, while the other, *M & S X-Ray Services Ltd. v. The Deputy Minister of National Revenue*, dealt with the importation of tables used by chiropractors in chiropractic diagnosis. Both these cases were dismissed on grounds similar to those for the dismissal of the eyewear appeals, which are summarized below.

Eyewear Appeals

Various appeals were filed with the Tribunal pursuant to section 67 of the *Customs Act*. The appellants requested that certain eyewear material be re-classified under the *Customs Tariff*. They appealed decisions of the Deputy Minister to cancel requests for re-determination of tariff classifications purportedly made pursuant to paragraph 60(1)(b), 64(a) or 64(d) or subparagraph 64(e)(i) of the *Customs Act*. All of the requests for re-determination under section 64 of the *Customs Act* were filed with the Deputy Minister in order to have certain goods re-classified in accordance with a decision of the Tribunal dealing with similar goods. The Deputy Minister refused to entertain a request for re-determination of the tariff classification pursuant to paragraph 60(1)(b) because the Minister did not deem it advisable to extend to two years the deadline for filing the request. The Deputy Minister refused to entertain requests for re-determination of tariff classifications under section 64 because the *Customs Act* provides that requests for re-determination must be filed under section 60 or 63 of the *Customs Act*.

The Tribunal was of the view that these appeals raised the following jurisdictional issues: (1) whether decisions of the Deputy Minister to refuse to entertain requests for re-determination of tariff classifications constitute decisions for purposes of section 67 of the *Customs Act*, i.e. whether the Tribunal has jurisdiction to hear the appeals; and (2) in the event that the Tribunal finds that the decisions do not constitute decisions for purposes of section 67, whether it has jurisdiction to compel the Deputy Minister to exercise his statutory duty.

The Tribunal found that it did not have jurisdiction to hear the appeals, as the decisions of the Deputy Minister to refuse to entertain requests for re-determination of tariff classifications pursuant to paragraph 60(1)(b), 64(a) or 64(d) or subparagraph 64(e)(i) of the *Customs Act* did not constitute decisions for purposes of section 67. Relying on the decision of the Federal Court of Canada - Trial Division in *Mueller Canada Inc. v. The Minister of National Revenue and The Deputy Minister of National Revenue*, the Tribunal took the view that there clearly must be a decision from the Deputy Minister with respect to the merits of the tariff classification in order to give the Tribunal jurisdiction under section 67 of the *Customs Act*. The Tribunal found that this was not the case in these appeals. Furthermore, the Tribunal concluded that any order directing the Deputy Minister to make a re-determination of the tariff classifications would be an order of *mandamus*, an equitable relief that the Tribunal has clearly no authority to grant. Section 18 of the *Federal Court Act* clearly provides that only the Federal Court of Canada has jurisdiction to make such an order. Consequently, the appeals were dismissed.

**Access to
Confidential
Information by
Counsel for
Respondent**

The Tribunal heard an interlocutory motion by means of a telephone conference call in a series of appeals filed by Nike Canada Ltd. pursuant to section 67 of the *Customs Act*. The appellant had filed both public and confidential versions of its brief. Counsel for the respondent requested that the appellant provide him with a copy of the material contained in the confidential brief. The appellant was willing to allow counsel for the appellant to disclose the confidential information to the respondent for the limited purpose of obtaining instruction with respect to the appeals, provided counsel for the respondent signed an amended Form III, Declaration and Undertaking, as provided for under subrule 16(1) of the Tribunal's Rules of Procedures. Counsel for the respondent refused and requested that the Secretary provide the respondent, through him, with a copy of the appellant's confidential brief. The Tribunal indicated to counsel for the respondent that he could only obtain a copy of the confidential brief if he filed a signed declaration and undertaking. Counsel for the respondent refused and filed a notice of motion with the Tribunal requesting an order: (1) declaring that the respondent and his counsel are entitled to be provided with a true copy of the confidential brief filed by the appellant, without execution by counsel for the respondent of the declaration and undertaking; and (2) requiring either the Secretary or the appellant to provide the respondent, through his counsel, with a copy of the confidential brief.

Relying on its decision in *Preformed Fibreglass Pipe Insulation*, which dealt with a similar issue and which was upheld by the Federal Court of Appeal, the Tribunal held that the only means by which it can disclose confidential information to any party to a proceeding before it, including appeals, is through subsection 45(3) of the CITT Act. That subsection, in conjunction with the Tribunal's Rules of Procedure, provides that the Tribunal may only disclose confidential information to counsel if that counsel has filed a declaration and undertaking, absent the consent of the party who has filed the confidential information. The Tribunal was of the opinion that subsection 45(3) of the CITT Act does not distinguish between either classes or types of parties or proceedings. As such, the respondent must be treated in the same manner as any other party to a proceeding before the Tribunal, including appeals. Furthermore, the Tribunal held that subsection 45(1) of the CITT Act cannot be used as a basis for the Tribunal to disclose confidential information to public servants. In the Tribunal's view, when the respondent appears before the Tribunal in an appeal, he does so as a party to that appeal and not in any capacity relating to the gathering of information or the making of determinations under the *Customs Act*. As such, sections 40, 42 and 107 of the *Customs Act* do not provide the respondent or the respondent's officials with an entitlement to confidential information in a proceeding before the Tribunal.

The respondent applied for judicial review of the Tribunal's decision in the Federal Court of Appeal. The application for judicial review was dismissed. The Federal Court of Appeal agreed with its own finding in *Preformed Fibreglass Pipe Insulation*, which concluded that sections 44 to 48 of the CITT Act constitute a complete code with respect to the disclosure of confidential information in proceedings before the Tribunal. The Federal Court of Appeal held that subsection 45(3) of the CITT Act sets out the only conditions under which information provided by one party and designated by it as confidential can be disclosed to another party. In the Federal Court of Appeal's view, subsection 45(3) of the CITT Act only contemplates disclosure of confidential information to counsel on conditions imposed by the Tribunal, namely, the signing of a declaration and undertaking, which will, in the absence of the consent of the person who originally provided the information, prevent its disclosure to any party (including counsel's client) or to any business competitor. The Federal Court of Appeal also agreed with the Tribunal's interpretation of subsection 45(1) of the CITT Act. Accordingly, the Federal Court of Appeal ruled that counsel for the respondent had to sign a declaration and undertaking, with which he would have to comply, subject to the modifications to which counsel for the appellant was prepared to consent.

Appeal Decisions Rendered Under Section 67 (Formerly Section 47) of the *Customs Act*, Section 81.27 (Formerly Section 51.27) of the *Excise Tax Act* and Section 61 of SIMA Between April 1, 1996, and March 31, 1997

Appeal No.	Appellant	Date of Decision	Decision
Customs Act			
AP-95-120	Bazaar & Novelty Co., A Division of Bingo Press & Specialty Limited	April 10, 1996	Allowed
AP-94-365, AP-94-375 and AP-95-242	Vilico Optical Inc.	May 7, 1996	Dismissed
AP-94-369	Canamalco Inc.		
AP-94-370, AP-95-025 and AP-95-058	Neostyle Canada Ltd.		
AP-94-371, AP-95-043 and AP-95-056	Nicolet America Inc.		
AP-94-372, AP-95-024, AP-95-036, AP-95-060, AP-95-105 and AP-95-106	Carl Zeiss Optical Inc.		
AP-94-373 and AP-95-042	Optiq Ltd.		
AP-94-374	Alta Vision Laboratories Ltd.		
AP-94-376 and AP-95-005	Western Optical Co. Inc.		
AP-94-377 and AP-95-107	Viva Optique Canada Inc.		
AP-94-378, AP-95-035 and AP-95-057	KDS Optical Company Ltd.		
AP-94-380, AP-95-037 and AP-95-054	Anthony Martin Eyewear Inc.		
AP-94-381	Opal Optical Ltd.		
AP-94-382	Rodenstock Canada Inc.		
AP-94-383	Crown Optical Centre Ltd.		
AP-94-384	KW Optical Limited		
AP-95-003 and AP-95-062	Savvy Eyewear Canada		
AP-95-004 and AP-95-027	AOCO Limited		
AP-95-006, AP-95-028, AP-95-039, AP-95-104 and AP-95-248	Centennial Optical Limited		
AP-95-026, AP-95-030, AP-95-031, AP-95-059 and AP-95-222	Optique Forte Ltd.		
AP-95-029 and AP-95-040	Diplomat-Ambassador Eyewear Ltd.		
AP-95-032, AP-95-034 and AP-95-038	Renaissance Eyewear Inc.		
AP-95-033 and AP-95-052	Compagnie d'Optique Polaire Inc.		
AP-95-041	Safilo Canada Inc.		
AP-95-053	Laboratoire d'Optique de Hull Inc.		
AP-95-055	Hakim Optical Laboratory Ltd.		
AP-95-223	Nicolet Optique Inc.		

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-94-324	Fisher Scientific Ltd.	May 7, 1996	Dismissed
AP-94-337	M & S X-Ray Services Ltd.	May 7, 1996	Dismissed
AP-94-142	Winners Only (Canada) Ltd.	May 13, 1996	Dismissed
AP-95-099 and AP-95-129	Carol Cable Company Canada Ltd.	May 14, 1996	Dismissed
AP-95-121	Centennial Optical Limited	May 14, 1996	Dismissed
AP-95-266	Canstor Consumer Storage Products Inc.	June 27, 1996	Dismissed
AP-95-089	Heco Medical Group Inc.	July 19, 1996	Allowed
AP-95-076	L&F Canada Inc.	August 8, 1996	Allowed
AP-95-090 and AP-95-166	Toyota Canada Inc.	August 15, 1996	Allowed
AP-95-096	Lloydaire, Division of Eljer Manufacturing Canada Inc.	August 15, 1996	Allowed
AP-94-150	Jana & Company	September 3, 1996	Allowed
AP-94-333	The Source Enterprises Limited	September 4, 1996	Allowed
AP-95-100	Rutherford Controls Ltd.	September 9, 1996	Dismissed
AP-94-151	Elise Ammon	October 3, 1996	Dismissed
AP-95-109	Bennett Fleet Inc.	October 7, 1996	Allowed
AP-94-199	Flora Distributors Ltd.	October 8, 1996	Dismissed
AP-95-016	Sharp Electronics of Canada Ltd.	October 23, 1996	Allowed
AP-95-098	Canadian Fracmaster Ltd.	October 31, 1996	Dismissed
AP-95-138	Arpac Storage Systems Corporation	October 31, 1996	Allowed
AP-95-170	Nalley's Canada Limited	October 31, 1996	Dismissed
AP-95-189	Asea Brown Boveri Inc.	November 5, 1996	Allowed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-94-076	Rosarium Enr.	November 6, 1996	Dismissed
AP-95-001	Ambrosia Chocolate Company	November 7, 1996	Dismissed
AP-95-269 and AP-95-285	Uvex Toko Canada Ltd.	November 7, 1996	Allowed
AP-95-308	City Wide Sports	November 7, 1996	Dismissed
AP-95-194	Atlas Alloys, A Division of Rio Algom Limited	November 22, 1996	Allowed in part
AP-95-044	Readi-Bake Inc.	December 2, 1996	Dismissed
AP-94-307	Northern Alberta Processing Co.	December 2, 1996	Allowed in part
AP-95-074	Superfine Import Co. Ltd.	December 3, 1996	Allowed in part
AP-95-277	Jascor Home Products Inc.	December 3, 1996	Allowed
AP-95-265	Innovation Specialties Inc.	December 6, 1996	Dismissed
AP-95-299 and AP-96-053	816392 Ontario Ltd., O/A Freedom Motors	December 6, 1996	Allowed
AP-95-252	I.D. Foods Superior Corp.	December 12, 1996	Dismissed
AP-95-262	Sony of Canada Ltd.	December 12, 1996	Allowed
AP-95-123	PMI Food Equipment Group Canada, A Division of Premark Canada Inc.	January 10, 1997	Allowed in part
AP-95-253	Bristol Uniforms North America Inc.	January 14, 1997	Allowed
AP-96-006	Robert Gustas	January 14, 1997	Dismissed
AP-95-126 and AP-95-255	Mattel Canada Inc.	January 15, 1997	Allowed in part
AP-95-230	Euro-Line Appliances	January 31, 1997	Dismissed
AP-95-020, AP-95-046 and AP-96-069	Black & Decker Canada Inc.	February 6, 1997	Dismissed
AP-95-047	Upper 49th Imports Inc.	February 7, 1997	Allowed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-95-240	Integrated Protection Inc.	February 7, 1997	Dismissed
AP-95-254	Grinnell Corp. of Canada Ltd., dba Grinnell Fire Protection	February 14, 1997	Allowed
AP-96-054	Sunbeam Corporation (Canada) Limited	February 14, 1997	Allowed
AP-96-061	Noma Industries Limited	February 14, 1997	Allowed
AP-95-284	Baker Textiles Inc.	February 17, 1997	Allowed
AP-95-233	S.C. Johnson and Son, Limited	February 21, 1997	Dismissed
AP-96-048	Canadian Optical Supply Company Ltd.	February 21, 1997	Dismissed

Excise Tax Act

AP-94-315	Gillin Road Group Home c/o Brantford and District Association for Community Living	April 2, 1996	Dismissed
AP-95-051	Groupe Unimédia Inc., Division Litho Prestige	April 12, 1996	Allowed
AP-92-199	Codispoti's Creative Jewelry Co. Ltd.	April 17, 1996	Dismissed
AP-95-178	Sharp Design Products Inc.	May 10, 1996	Dismissed
AP-94-113	Doug and Marcy Beddome	May 23, 1996	Dismissed
AP-95-071	Advance-Interface Electronic Inc.	May 30, 1996	Dismissed
AP-94-003	Hebert's Flooring Ltd.	August 20, 1996	Dismissed
AP-93-273	Arnold Forsythe	September 9, 1996	Dismissed
AP-95-135	Southam Inc., RBW Graphics Division	September 10, 1996	Dismissed
AP-94-276	L.J. Chopp and Associates	September 11, 1996	Dismissed
AP-92-081	Shoppers Autobody Refinishers Ltd.	September 11, 1996	Dismissed
AP-95-118	King Framing	October 7, 1996	Allowed in part
AP-93-011	Noreen P. Russell	October 8, 1996	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-92-063	John Stephen Richards	October 15, 1996	Dismissed
AP-93-283	Electrol Distributors Ltd.	October 23, 1996	Dismissed
AP-95-196	Denman Graphics Ltd.	October 24, 1996	Dismissed
AP-95-066	The British Columbia Mental Health Society	October 25, 1996	Dismissed
AP-95-045	Sidewinder Conversions Ltd.	October 31, 1996	Allowed in part
AP-95-171	Waite Air Photos Inc.	October 31, 1996	Dismissed
AP-95-259	Paccar of Canada Ltd.	November 22, 1996	Allowed
AP-93-251	Wellsley Investments Inc.	December 2, 1996	Dismissed
AP-94-119	Inland Re-Refining Company Limited	December 3, 1996	Dismissed
AP-94-148	Suncor Inc.	December 19, 1996	Allowed in part
AP-94-327	Double N Earth Movers Ltd.	December 19, 1996	Dismissed
AP-94-330	Erin Michaels Mfg. Inc.	January 10, 1997	Allowed
AP-94-335	Épicerie Chez Léonard	January 14, 1997	Dismissed
AP-96-025, AP-96-026 and AP-96-027	Francon-Lafarge, Division of Lafarge Canada Inc.	February 10, 1997	Dismissed
AP-95-181	Lawton's Drug Stores Limited	February 14, 1997	Allowed
AP-95-124	Northwest Airlines, Inc.	February 21, 1997	Dismissed
AP-95-179	Gerald The Swiss Goldsmith	February 21, 1997	Allowed in part
AP-95-304	Kott Truss Inc.	February 21, 1997	Allowed
AP-95-238	Ralph Roberts	March 18, 1997	Allowed
AP-95-174, AP-95-175 and AP-95-176	Burrows Lumber CD Limited, Burrows Lumber Inc. and Wildwood Forest Products Inc.	March 21, 1997	Dismissed
AP-96-086	Intraurban Projects	March 25, 1997	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
<i>Special Import Measures Act</i>			
AP-95-079	J.B. Multi-National Trade Inc.	October 2, 1996	Dismissed
AP-95-093	Flortech Systems Ltd.	October 17, 1996	Dismissed
AP-95-258	Specialized Bicycle Components Canada, Inc.	October 22, 1996	Allowed in part
AP-95-008	Paulmar Cycle Inc., Division of Marr's Leisure Holdings Inc. and Marr's Leisure Products Inc.	November 8, 1996	Dismissed
AP-95-084	Marr's Leisure Products Inc.	November 8, 1996	Dismissed
AP-96-001	Renaissance Imports Ltd.	February 7, 1997	Allowed

CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

Introduction

The CITT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the government or the Minister of Finance.

Tariff-Related Inquiries

Under section 19 of the CITT Act, the Minister of Finance may refer to the Tribunal for inquiry and report “any tariff-related matter, including any matter concerning the international rights or obligations of Canada in connection therewith.”

Textile Reference

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as amended on March 20 and July 24, 1996, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister of Finance.

Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, for production. The textile inputs for which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of Schedule I to the *Customs Tariff*. Since July 24, 1996, and at least until July 1, 1999, the following yarns are not included in the textile reference:

Knitting yarns, solely of cotton or solely of cotton and polyester staple fibres, measuring more than 190 decitex, of Chapter 52 or subheading No. 5509.53 other than those used to make sweaters, having a horizontal self-starting finished edge and the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimetres (12 or fewer stitches per inch) measured in the horizontal direction.

Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, to company-, textile- and/or end-use-specific tariff provisions. The recommendation could be for tariff relief for either a specific or an indeterminate period of time. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.

Notification of a Request

Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice announcing the request. The minimum period of time for the notification of a request before an investigation is commenced is 30 days.

This notification is designed to increase transparency, identify potential deficiencies in the request, avoid unnecessary investigations, provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply, inform other users of identical or substitutable textile inputs, prepare the domestic industry to respond to subsequent investigation questionnaires and give associations advance time for planning and consultation with their members.

Investigations

When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as Revenue Canada, the Department of Foreign Affairs and International Trade, the Department of Industry and the Department of Finance. The notice is also published in the *Canada Gazette*.

In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.

To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits or questionnaires. Information is obtained from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of determining whether the tariff relief sought will maximize net economic gains for Canada.

In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.

The procedures developed for the conduct of the Tribunal's investigations envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

Where confidential information is provided to the Tribunal, such information falls within the protection of the CITT Act. Accordingly, the Tribunal will only distribute confidential information to counsel who are acting on behalf of a party and who have filed a declaration and undertaking.

**Recommendations
to the Minister**

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within any earlier specified time frame which the Tribunal determines to be appropriate. The Tribunal will recommend the reduction or removal of customs duties on a textile input where it will maximize net economic gains for Canada.

Review Process

Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify such a request.

Annual Status Report

In accordance with the terms of reference received by the Tribunal directing it to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations, the Tribunal provided the Minister of Finance, on November 29, 1996, with its second annual status report on the investigation process. The status report covered the period from October 1, 1995, to September 30, 1996. In the course of

	<p>preparing the status report, the Tribunal invited its stakeholders to comment on proposed changes to the investigation process. The Tribunal heard oral submissions on June 5, 1996.</p>
<p>Recommendations Submitted During 1996-97</p>	<p>During fiscal year 1996-97, the Tribunal issued 23 reports to the Minister of Finance which related to 56 requests for tariff relief, plus a reference from the Minister of Finance for a further investigation into a recommendation previously made by the Tribunal. At year end, 10 requests were outstanding, of which investigations had been commenced in respect of 8 requests. Table 1 at the end of this chapter summarizes these activities.</p>
<p>Recommendations in Place</p>	<p>By the end of fiscal year 1996-97, the Government had implemented 34 recommendations by the Tribunal. Table 2 provides a summary of recommendations implemented to date.</p> <p>A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.</p>
<p><i>Paris Star Knitting Mills Inc.</i> TR-95-037</p>	<p>The Tribunal recommended to the Minister of Finance that the customs duty on importations of printed woven fabrics or blends thereof that contain 85 percent or more by weight of viscose or cuprammonium rayon and 15 percent or less by weight of other materials, including linen and metallic yarns, with a value for duty of \$5/m² or more, for use in the manufacture of women's apparel, including blouses, dresses, skirts, shorts, jackets and pants, be removed for an indeterminate period. In its report, the Tribunal indicated that the higher-priced fabrics from Europe do not impact on any production or value-added operation in Canada and should be allowed duty-free entry into Canada. The Tribunal estimated that the granting of such tariff relief would result in a net commercial benefit in excess of \$500,000 per annum.</p>

**Fantastic-T Knitter
Inc., and B.C.
Garment Factory Ltd.
and Global Garment
Factory Ltd.**

*TR-95-015 to
TR-95-032,
TR-95-038 to
TR-95-042,
TR-95-046,
TR-95-048 to
TR-95-050 and
TR-95-055*

Beco Industries Ltd.

*TR-95-035
TR-95-043 and
TR-95-044*

The Tribunal recommended to the Minister of Finance that the 28 requests for tariff relief concerning certain circular knitted fabrics, for use in the production of men's and boys' shirts, pullovers and pants, and of women's and girls' blouses, pants, T-shirts and tops, not be granted. The Tribunal was persuaded that the effect of tariff removal would be detrimental not only to domestic production of fabrics made from combed cotton yarns but also to domestic production of fabrics made from carded cotton yarns. Since domestic knitted fabric production is concentrated in the latter sector, it was the Tribunal's view that the consequences of tariff relief for the domestic knitting industry would be considerable, even if tariff relief were extended only to fabrics made from combed cotton yarns.

The Tribunal recommended to the Minister of Finance that tariff relief on importations of: woven fabric, containing at least 70 percent but less than 85 percent by weight of cotton, mixed with polyester fibres, printed, measuring less than 250 decitex per single yarn, of widths ranging from 170 to 240 cm, of weights ranging from 90 to 110 g/m², for use in the manufacture of comforters, pillow cases, pillow shams, dust ruffles, draperies, valances, table rounds and duvet covers; and woven fabric, solely of cotton, printed, measuring less than 300 decitex per single yarn, of widths ranging from 170 to 240 cm, of weights ranging from 85 to 110 g/m², for use in the manufacture of comforters, not be granted. With regard to the cotton/polyester fabric, the Tribunal concluded that it competes with fabrics made in Canada, that the end products made from the imported fabric compete with end products manufactured in Canada from domestically produced fabrics and that the costs ensuing from tariff relief would greatly outweigh any benefits that would result if tariff relief were granted. With regard to the cotton fabric, the Tribunal concluded that domestically produced cotton/polyester fabrics are substitutable for the imported cotton fabric used in the manufacture of budget comforters and that the price at which the budget comforters are available on the market has an influence on the price obtainable by other manufacturers of comforters. Consequently, granting tariff relief on the imported cotton fabric would have serious adverse effects on both the domestic textile producers and the manufacturers of comforters that use domestically produced fabrics.

Sealy Canada Ltd.

TR-95-056 and

The Tribunal recommended to the Minister of Finance that the customs duty on importations of: woven fabrics of textured and non-textured yarns of polyester, polypropylene or rayon; printed warp-knit fabrics of polyester filament yarns; and warp-knit (stitch-bonded) fabrics, for use as ticking in the production of

TR-95-056A

mattresses, be removed for an indeterminate period of time. The Tribunal noted that the only textile manufacturer which appeared to be able to supply identical or substitutable fabrics, Rayonese Textile Inc., supported the request. Consequently, the Tribunal concluded that no domestic production would be affected by removing the duty on the fabrics and that such removal would result in significant savings and have a positive impact on the competitiveness of Sealy Canada Ltd. and other mattress manufacturers in the domestic market.

Further to the Tribunal's recommendation, officials at Revenue Canada determined that the tariff relief subsequently provided by the Minister of Finance (Order in Council PC 1996-1554) did not cover all of the fabrics originally requested by Sealy Canada Ltd. Accordingly, the Minister of Finance requested the Tribunal, pursuant to section 19 of the CITT Act, to inquire into whether the tariff relief should be extended. Following an expedited inquiry, in which no domestic textile producers opposed the extension of tariff relief, the Tribunal concluded that there would be net economic gains from the proposed relief and, accordingly, recommended that tariff relief be extended.

Buckeye Industries

TR-95-063

The Tribunal recommended to the Minister of Finance that the customs duty on importations originating in the United States of: dyed, 3-thread or 4-thread twill weave fabrics, containing 65 percent by weight of polyester staple fibres and 35 percent by weight of cotton, having in the warp 415 yarns or more per 10 cm and in the weft 240 yarns or more per 10 cm, of a weight of 160 g/m² or more, but not exceeding 190 g/m², for use in the manufacture of men's shirts; and dyed, 3-thread or 4-thread twill weave fabrics, containing 65 percent by weight of polyester staple fibres and 35 percent by weight of cotton, having in the warp 425 yarns or more per 10 cm and in the weft 165 yarns or more per 10 cm, of a weight of 260 g/m² or more, but not exceeding 290 g/m², for use in the manufacture of men's trousers, be removed for an indeterminate period of time. The Tribunal found no evidence that any domestic fabric producer or converter had produced or offered a fabric comparable in quality to the US-sourced fabrics in the volumes required by the domestic users since Dominion Textile left the business in 1992. Accordingly, the Tribunal determined that the net economic benefit that would result from the requested tariff relief would amount to the value of duties which, but for the tariff relief, would have been collected on imports of the fabrics from the United States. Duties on imports of the fabrics were projected to be \$290,000 in 1997 and zero on January 1, 1998, when duties payable on imports of fabrics from the United States are removed completely.

TABLE 1**Disposition of Requests for Tariff Relief Between April 1, 1996, and March 31, 1997**

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-94-003	Canastro Textiles Inc.	yarn	September 26, 1996	Withdrawn
TR-95-007 and TR-95-008	Parapad Inc.	fabric	April 1, 1996	Tariff relief not granted
TR-95-009	Peerless Clothing Inc.	fabric	April 12, 1996	a) Indeterminate tariff relief b) Two-year tariff relief
TR-95-010 and TR-95-034	Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	fabric	August 27, 1996	Indeterminate partial tariff relief
TR-95-013	Doubletex	fabric	In Progress	
TR-95-014	Palliser Furniture Ltd.	fabric	May 1, 1996	Two-year tariff relief
TR-95-015 to TR-95-032, TR-95-038 to TR-95-042, TR-95-046, TR-95-048 to TR-95-050 and TR-95-055	Fantastic-T Knitter Inc., B.C. Garment Factory Ltd. and Global Garment Factory Ltd.	fabric	July 11, 1996	Tariff relief not granted
TR-95-035, TR-95-043 and TR-95-044	Beco Industries Ltd.	fabric	July 4, 1996	Tariff relief not granted
TR-95-036	Canadian Mill Supply Co. Ltd.	fabric	May 27, 1996	Indeterminate tariff relief
TR-95-037	Paris Star Knitting Mills Inc.	fabric	July 31, 1996	Indeterminate tariff relief
TR-95-045	Yeadon Fabric Structures Ltd.	fabric	September 24, 1996	Withdrawn
TR-95-047	B.C. Garment Factory Ltd.	thread	August 20, 1996	Tariff relief not granted
TR-95-051	Camp Mate Limited	fabric	June 10, 1996	Indeterminate tariff relief
TR-95-052	National-General Filter Products Ltd.	fabric	March 12, 1997	Terminated - Lack of jurisdiction

Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-053 and TR-95-059	Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	fabric	June 27, 1996	Indeterminate tariff relief
TR-95-054	Handler Textile (Canada) Inc.	fabric	October 23, 1996	Indeterminate tariff relief — United States only
TR-95-056	Sealy Canada Ltd.	fabric	June 28, 1996	Indeterminate tariff relief
TR-95-056A	Sealy Canada Ltd.	fabric	March 17, 1997	Indeterminate tariff relief
TR-95-057 and TR-95-058	Doubletex	fabric	October 24, 1996	Indeterminate tariff relief
TR-95-060	Triple M Fiberglass Mfg. Ltd.	fabric	September 26, 1996	Indeterminate tariff relief
TR-95-061	Camp Mate Limited	fabric	September 3, 1996	Indeterminate tariff relief
TR-95-062	Freed & Freed International Ltd.	fabric	July 17, 1996	Withdrawn
TR-95-063	Buckeye Industries	fabric	December 19, 1996	Indeterminate tariff relief
TR-95-064 and TR-95-065	Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	fabric	February 12, 1997	Indeterminate tariff relief
TR-95-066	Lenrod Industries Ltd.	fabric	February 25, 1997	Tariff relief not granted
TR-96-001	Camoplast Rockland Limited	fabric	April 12, 1996	Terminated - Lack of jurisdiction
TR-96-002	Hang Tung Garment Factory (Canada) Ltd.	yarn	June 19, 1996	Terminated
TR-96-003	Venture III Industries Inc.	fabric	January 31, 1997	Indeterminate tariff relief
TR-96-004	Acton International Inc.	fabric	February 27, 1997	Indeterminate tariff relief
TR-96-005	Peerless Clothing Inc.	fabric	Not yet initiated	

Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-96-006	Alpine Joe Sportswear Ltd.	fabric	March 27, 1997	Indeterminate tariff relief
TR-96-007	H.D. Brown Enterprises Ltd.	fabric	In Progress	
TR-96-008 to TR-96-013	Les Collections Shan Inc.	fabric	In Progress	
TR-96-014	Peerless Clothing Inc.	fabric	Not yet initiated	
TR-96-015	Main Knitting Inc.	yarn	February 10, 1997	Terminated -Lack of jurisdiction

TABLE 2**Tariff Relief Recommendations in Place**

Request No.	Requester	Code	Date	Duration
TR-94-001	Canatex Industries (Division of Richelleu Knitting Inc.)	4077	May 30, 1995	Permanent tariff relief
TR-94-002 and TR-94-002A	Kute-Knit Mfg. Inc.	4117, 4118	July 10, 1996	Three-year tariff relief
TR-94-004	Woods Canada Limited	4232	July 26, 1995	Permanent tariff relief
TR-94-005	Hemisphere Productions Inc.	4242	July 26, 1995	Three-year tariff relief
TR-94-009	Équipement Saguenay (1982) Ltée	4282	July 26, 1995	Three-year tariff relief
TR-94-010	Palliser Furniture Ltd.	4397	April 30, 1996	Permanent tariff relief
TR-94-011 and TR-94-019	Château Stores of Canada Ltd. and Hemisphere Productions Inc.	4263	April 30, 1996	Two-year tariff relief
TR-94-012	Peerless Clothing Inc.	4383	April 30, 1996	Indeterminate tariff relief
TR-94-013 and TR-94-016	MWG Apparel Corp.	4268, 4269	April 30, 1996	Permanent tariff relief
TR-94-017 and TR-94-018	Elite Counter & Supplies	4495, 4496	December 13, 1995	Permanent tariff relief
TR-95-003	Landes Canada Inc.	4288	December 13, 1995	Permanent tariff relief
TR-95-004	Lingerie Bright Sleepwear (1991) Inc.	4250	July 10, 1996	Indeterminate tariff relief
TR-95-005	Lingerie Bright Sleepwear (1991) Inc.	4251	July 10, 1996	Indeterminate tariff relief
TR-95-009	Peerless Clothing Inc.	4271, 4272 4273	August 28, 1996	Indeterminate tariff relief Two-year tariff relief
TR-95-010 and TR-95-034	Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	4410	November 29, 1996	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No.	Requester	Code	Date	Duration
TR-95-011	Louben Sportswear Inc.	4218	July 10, 1996	Indeterminate tariff relief
TR-95-012	Perfect Dyeing Canada Inc.	4155	July 10, 1996	Indeterminate tariff relief
TR-95-014	Palliser Furniture Ltd.	4418	March 19, 1997	Two-year tariff relief
TR-95-036	Canadian Mill Supply Co. Ltd.	4401	September 27, 1996	Indeterminate tariff relief
TR-95-037	Paris Star Knitting Mills Inc.	4409	September 27, 1996	Indeterminate tariff relief
TR-95-051	Camp Mate Limited	4407, 4408	September 27, 1996	Indeterminate tariff relief
TR-95-053 and TR-95-059	Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	4276, 4277	September 27, 1996	Indeterminate tariff relief
TR-95-054	Handler Textile (Canada) Inc.	4417	March 19, 1997	Indeterminate tariff relief - United States only
TR-95-056	Sealy Canada Ltd.	4402, 4403, 4404, 4405, 4406	September 27, 1996	Indeterminate tariff relief
TR-95-057 and TR-95-058	Doubletex	4415, 4416	March 19, 1997	Indeterminate tariff relief
TR-95-060	Triple M Fiberglass Mfg. Ltd.	4412	December 19, 1996	Indeterminate tariff relief
TR-95-061	Camp Mate Limited	4411	December 19, 1996	Indeterminate tariff relief
TR-95-063	Buckeye Industries	4413, 4414	March 19, 1997	Indeterminate tariff relief

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Suppliers may now challenge procurements that they believe have not been carried out in accordance with the requirements of the following: Chapter Ten of NAFTA, Chapter Five of the AIT or the WTO *Agreement on Government Procurement*. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, and January 1, 1996, respectively.

Any potential suppliers who believe that they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts on a designated procurement, may lodge a formal complaint with the Tribunal. A potential supplier with an objection is encouraged to resolve the issue first with the government institution responsible for the procurement. When this process is not successful or a supplier wants to deal directly with the Tribunal, the complainant may ask the Tribunal to consider the case by filing a complaint within the prescribed time limit.

When the Tribunal receives a complaint, it reviews the submission against the criteria for filing. If there are deficiencies, the complainant is given an opportunity to correct these within a specified time limit. Once the complaint meets the criteria for filing, the government institution and all other interested parties are sent a formal notification of the complaint. A copy of the complaint is sent to the government institution. When the Tribunal decides to conduct an inquiry, an official notice of the complaint is published in *Government Business Opportunities* and the *Canada Gazette*. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal, unless the government institution certifies that the procurement is urgent or that the delay would be against the public interest.

After receipt of its copy of the complaint, the government institution responsible for the procurement files a report responding to the allegations. The complainant is then sent a copy of the Government Institution Report and has seven days to submit comments. These are forwarded to the government institution and any interveners.

A staff investigation, which can include interviewing individuals and examining files and documents, may be conducted and result in the production of a Staff Investigation Report. This report is circulated to the parties for their comment. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

The Tribunal then makes a determination, which may consist of recommendations to the government institution (such as re-tendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing complainant for filing and proceeding with the bid challenge and/or costs for preparing the bid. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal in its determination are to be implemented to the greatest extent possible.

Summary of Procurement Review Activities

	1995-96	1996-97
CASES RESOLVED BY OR BETWEEN PARTIES		
Resolved Between Parties	3	0
Withdrawn	3	6
Abandoned While Filing	<u>4</u>	<u>1</u>
Subtotal	10	7
INQUIRIES NOT INITIATED ON PROCEDURAL GROUNDS		
Lack of Jurisdiction	8	7
Late Filing	4	5
No Valid Basis	<u>6</u>	<u>9</u>
Subtotal	18	21
CASES DETERMINED ON MERIT		
Complaint not Valid	3	7
Complaint Valid	<u>3</u>	<u>5</u>
Subtotal	6	12
IN PROGRESS	<u>8</u>	<u>9</u>
TOTAL	42	49

Summary of Selected Decisions

During fiscal year 1996-97, the Tribunal issued 12 written determinations of its findings and recommendations. In 5 of the 12 written decisions, the complaints were determined to be valid or valid in part. In these cases, various remedies were granted in the form of cost awards or recommendations. In one case, File No. PR-95-023, the Department of Public Works and Government Services (the Department) decided not to implement the Tribunal's recommendations. Nine other cases were in progress at year end. The table at the end of this chapter summarizes these activities, as well as those cases resolved by or between parties.

Of the cases heard by the Tribunal in carrying out its procurement review functions, certain decisions stand out from among the others because of the legal significance of the cases. A brief résumé of a representative sample of such cases follows. These summaries have been prepared for general information purposes only and have no legal status.

Array Systems Computing Inc.

PR-95-023

The Tribunal made a determination with respect to a complaint filed by Array Systems Computing Inc. (the complainant) concerning a solicitation of the Department. The solicitation was a limited tender for the purchase of six AN/SQS-510 Sonar systems and modifications to two identical Sonar systems for the Iroquois class ships for the Department of National Defence.

The complainant alleged that the Department issued an overly restrictive specification and limited competition to only one supplier, in contravention of the AIT.

Having examined the evidence and arguments presented by the parties and considering the subject matter of the complaint, the Tribunal determined that the complaint was valid; therefore, it recommended, as a remedy, that the Department issue a competitive solicitation for the requirement in accordance with the provisions of the AIT. The Department decided not to implement the Tribunal's recommendations citing that a competitive procurement in this instance would create undue delays to the operational requirements of the Department of National Defence.

FPG/HRI Joint Venture (Fall Protection Group Inc. and HRI Human Resources International Inc.)

PR-95-031

The Tribunal made a determination with respect to a complaint filed by FPG/HRI Joint Venture (Fall Protection Group Inc. and HRI Human Resources International Inc.) (the complainant) concerning a solicitation of the Department for the supply of instruction and supervision services in various areas of technical expertise for the cadet leadership and challenge course at the Banff National Army Cadet Training Centre of the Department of National Defence.

The complainant alleged that the procurement process was flawed because improper and unfair communications took place between members of the evaluation committee and the contract awardee during the bidding process. The complainant also alleged that its bid was improperly evaluated and that the proposal by the contract awardee should have been declared non-compliant.

After careful consideration of the requirements of NAFTA and the AIT, the Tribunal determined that the complaint was valid in part. The Tribunal recommended, as a remedy, that the Department not exercise the option to extend the contract for an additional two years and, instead, should the requirement continue to exist, re-issue a competitive solicitation for the requirement in accordance with the provisions of the applicable agreements. The Department agreed to implement the Tribunal's recommendation.

**ISM Information
Systems Management
Corporation**

PR-95-040

The Tribunal made a determination with respect to a complaint filed by ISM Information Systems Management Corporation (the complainant) concerning a solicitation of the Department for the supply of technical services to support local area network and approximately 8,000 workstations located in the National Capital Region and elsewhere in Canada.

The complainant alleged that the Department, by requiring suppliers to commit to full indemnification of the Crown for third party claims relating to consequential damages, breached certain requirements of NAFTA.

Having examined the evidence and arguments presented by the parties and considering the obligations specified in NAFTA, the Tribunal determined that the complaint was not valid.

**Conair Aviation,
A division of Conair
Aviation Ltd.**

PR-95-039

The Tribunal made a determination with respect to a complaint filed by Conair Aviation, A division of Conair Aviation Ltd. (the complainant) concerning a solicitation of the Department. The solicitation was for the supply of air tanker services, including pilot services, for fire bombing activities for the Department of Indian Affairs and Northern Development, to be based at Whitehorse, Yukon Territory, and operating from different points in the Yukon Territory, the Northwest Territories, adjacent provinces and Alaska.

The complainant alleged that the Department withdrew the award of the contract to the complainant and reissued the Request for Proposal in a manner contrary to the requirements of NAFTA.

Having examined the evidence and arguments presented by the parties and considering the subject matter of the complaint, the Tribunal determined that the procurement was not conducted according to NAFTA and that, therefore, the complaint was valid.

The Tribunal recommended, as a remedy, that the Department pay the complainant compensation recognizing that the complainant should have been awarded the contract and would have had the opportunity to profit therefrom.

The Tribunal also recommended that the Department not exercise the option to extend the contract for an additional year and, instead should the requirement continue to exist, reissue a competitive solicitation for the requirement in accordance with the provisions of the applicable agreements.

The Tribunal awarded the complainant its reasonable costs incurred in relation to filing and proceeding with its complaint.

The Department agreed to implement the Tribunal's recommendations and the complainant was given complaint costs of \$25,796.73 and compensation of \$290,203.65.

Corel Corporation

PR-96-011

The Tribunal made a determination with respect to a complaint filed by Corel Corporation (the complainant) concerning a solicitation of the Department for the supply of a department-wide, unlimited user licence for an Office Automation Suite, including installation and integration support and training services for approximately 40,000 users in the Department of National Defence.

The complainant alleged that the manner in which this procurement was carried out violated Articles 1008(1)(a) and (b) of NAFTA. The complainant submitted that this procurement was fundamentally flawed and failed to conform to the rules of fair and equal treatment of the participants.

Having examined the evidence and arguments presented by the parties and considering the obligations specified in NAFTA, the Tribunal determined that the complaint was not valid.

The Tribunal's decision has been appealed to the Federal Court of Canada by the complainant.

Bell Canada

PR-96-023

The Tribunal made a determination with respect to a complaint filed by Bell Canada (the complainant) concerning a solicitation of the Department for the purchase of a Military Message Handling System Proof of Concept for the Department of National Defence.

It was alleged that the Department, by improperly determining the complainant's proposal non-compliant to the requirements of the Request for Proposal, violated certain provisions of the AIT and NAFTA.

Having examined the evidence and arguments presented by the parties, the Tribunal determined, in consideration of the subject matter of the complaint, that the procurement was conducted in accordance with the AIT and, therefore, that the complaint was not valid.

Disposition of Procurement Complaints Between April 1, 1996, and March 31, 1997

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-95-023	Array Systems Computing Inc.	January 5, 1996	Decision issued April 16, 1996 Complaint valid
PR-95-031	FPG/HRI Joint Venture	February 26, 1996	Decision issued June 6, 1996 Complaint valid in part
PR-95-033	Emcon Emanation Control Limited	March 5, 1996	Decision issued June 3, 1996 Complaint not valid
PR-95-035	Secure Technologies International Inc.	March 15, 1996	Decision issued June 13, 1996 Complaint valid in part
PR-95-037	Taftek	March 22, 1996	Complaint withdrawn
PR-95-038	Équipement Industriel Champion Inc.	March 25, 1996	Decision issued June 25, 1996 Complaint not valid
PR-95-039	Conair Aviation, A division of Conair Aviation Ltd.	March 25, 1996	Decision issued August 8, 1996 Complaint valid
PR-95-040	ISM Information Systems Management Corporation	March 27, 1996	Decision issued July 30, 1996 Complaint not valid
PR-96-001	Atlantis Aerospace Corporation	April 3, 1996	Not accepted for inquiry/No valid basis
PR-96-002	A.I. Inc.	April 4, 1996	Not accepted for inquiry/No valid basis
PR-96-003	Andaurex Industries Inc.	April 25, 1996	Not accepted for inquiry/Lack of jurisdiction
PR-96-004	Équipement Industriel Champion Inc.	May 23, 1996	Not accepted for inquiry/No valid basis
PR-96-005	International Code Services	May 24, 1996	Complaint withdrawn
PR-96-006	Array Systems Computing Inc.	May 24, 1996	Not accepted for inquiry/Lack of jurisdiction
PR-96-007	Lease 1 Financial Services Inc.	May 29, 1996	Not accepted for inquiry/Lack of jurisdiction
PR-96-008	MacDonald Dettwiler's	June 11, 1996	Not accepted for inquiry/Lack of jurisdiction
PR-96-009	Addis Enterprises	June 20, 1996	Decision issued September 18, 1996 Complaint not valid
PR-96-010	Spacesaver Mobile Storage Systems Corporation	June 24, 1996	Not accepted for inquiry/Lack of jurisdiction

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-96-011	Corel Corporation	July 3, 1996	Decision issued November 21, 1996 Complaint not valid Tribunal's decision appealed to Federal Court of Canada
PR-96-012	Armstrong Laing Group	July 5, 1996	Not accepted for inquiry/Lack of jurisdiction
PR-96-013	General Waste	July 12, 1996	Complaint withdrawn
PR-96-014	United Van Lines Canada (Ltd.)	August 1, 1996	Not accepted for inquiry/No valid basis
PR-96-015	Le Groupe BGM	August 1, 1996	Not accepted for inquiry/No valid basis
PR-96-016	Hitachi Data Systems	August 15, 1996	Not accepted for inquiry/No valid basis
PR-96-017	Shaddy International Marketing Ltd.	August 16, 1996	Not accepted for inquiry/No valid basis
PR-96-018	Tru-Temp Electric Heat Ltd.	August 16, 1996	Not accepted for inquiry/Late filing
PR-96-019	Knoll North America Inc.	September 24, 1996	Complaint withdrawn
PR-96-020	E.D.S. of Canada Ltd.	October 4, 1996	Decision issued January 10, 1997 Complaint not valid
PR-96-021	London Photocopy Inc.	October 10, 1996	Decision issued February 7, 1997 Complaint valid in part
PR-96-022	Threshold Technologies Company	November 18, 1996	Complaint withdrawn
PR-96-023	Bell Canada	November 27, 1996	Decision issued February 21, 1997 Complaint not valid
PR-96-024	AirSpray (1976) Ltd.	November 27, 1996	Not accepted for inquiry/Late filing
PR-96-025	Digital Equipment of Canada Ltd.	December 12, 1996	Complaint withdrawn
PR-96-026	A V Spex Audio Visual & Video Systems	December 18, 1996	Not accepted for inquiry/Late filing
PR-96-027	Philip Environmental	January 7, 1997	Accepted for inquiry
PR-96-028	M.C. Coach Informatiques International Inc.	January 24, 1997	Not accepted for inquiry/Late filing
PR-96-029	Pro-Safe Fire Training Systems	February 5, 1997	Abandoned while filing
PR-96-030	Symtron Systems Inc.	February 24, 1997	Accepted for inquiry

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-96-031	ATS Aerospace Inc.	February 24, 1997	Not accepted for inquiry/Lack of jurisdiction
PR-96-032	Académie de Gérontologie de l'Outaouais Inc.	February 26, 1997	Not accepted for inquiry/No valid basis
PR-96-033	Versatech Products Inc.	February 27, 1997	Accepted for inquiry
PR-96-034	Atlantic Safety Centre	March 4, 1997	Accepted for inquiry
PR-96-035	Accutel Conferencing Systems Inc.	March 7, 1997	Accepted for inquiry
PR-96-036	Mirtech International Security Inc.	March 11, 1997	Accepted for inquiry
PR-96-037	Sybase Canada Limited	March 11, 1997	Accepted for inquiry
PR-96-038	Soquelec Ltd.	March 14, 1997	Not accepted for inquiry/No valid basis
PR-96-039	Datafile, a TAB Products Company	March 17, 1997	Not accepted for inquiry/Late filing
PR-96-040	Hervé Pomerleau inc.	March 18, 1997	Accepted for inquiry
PR-96-041	On Power Systems Inc.	March 19, 1997	Being filed

CHAPTER VII

USE OF ANTI-DUMPING AND COUNTERVAILING MEASURES

Each year since 1990, the Tribunal's research staff has produced working papers on anti-dumping measures. This year's paper, *Canadian and International Use of Anti-Dumping and Countervailing Measures: 1988-1995*, provides updated estimates of imports affected by such measures through 1995. It also includes estimates of the value of Canadian domestic shipments affected by Canadian measures. Aggregate data are presented on a yearly basis. Detailed compilations by product and country affected are presented as annual averages for two sub-periods: 1988-91 and 1992-95. The staff paper also provides updated information on anti-dumping and countervailing measures by WTO members since 1990. This chapter summarizes the highlights of the staff paper.

Canada's Use of Anti-Dumping and Countervailing Measures

At the end of 1995, there were 41 injury findings in place in Canada, covering 97 actions. They affected imports from 33 countries. In 1995, the Tribunal made 2 injury findings, covering 6 actions affecting imports from 5 countries and rescinded 5 actions against imports from 5 countries.

Canadian Anti-Dumping and Countervailing Measures, 1988-95

Year ²	Actions ¹			Findings ¹
	Added	Expired/ Rescinded	In Place (Dec. 31)	In Place (Dec. 31)
1988	3	22	140	64
1989	2	14	128	59
1990	10	60	78	38
1991	12	17	73	35
1992	4	7	70	33
1993	16	0	86	38
1994	19	9	96	39
1995	6	5	97	41

1. Actions are measured on a country-specific basis. Findings can include several actions on the same product. For example, the Tribunal finding in Inquiry No. NQ-90-005, *Carbon Steel Welded Pipe*, includes six actions: one each for Argentina, India, Romania, Taiwan, Thailand and Venezuela. Combined anti-dumping and countervailing measures against imports from a country are counted as a single action.

2. Counting convention: the first year of a measure is the year of the preliminary determination; the last is the year prior to the year in which the measure was rescinded or expired.

Source: Tribunal Research Branch Data Base.

Import Values

In 1995, the Tribunal's staff estimated the value of imports affected by anti-dumping and countervailing measures to be \$1 billion, two and a half times the level of 1990. They accounted for 0.51 percent of total Canadian imports in 1995, down from 0.54 percent in 1994.

Canadian Imports Affected by Anti-Dumping and Countervailing Measures, 1988-95 (\$000)

Year	Total Imports (1)	Added by New Inquiries (2)	Rescinded and Expired (3)	Value of Imports Affected		As a Percentage of Total Imports (6)
				Change in Imports: Findings in Place (4)	Total (5)	
1988	93,147,427	21,267	436,633	(202,830)	744,111	0.80
1989	120,771,230	468	12,691	406,110	1,137,998	0.94
1990	120,821,268	85,504	806,257	(4,875)	412,370	0.34
1991	120,362,894	328,285	56,035	(27,429)	657,191	0.55
1992	132,128,011	104,001	70,512	(69,096)	621,584	0.47
1993	152,102,323	149,489	0	(13,712)	757,361	0.50
1994	181,789,114	179,671	59,589	97,387	974,830	0.54
1995	200,819,808	75,875	41,572	13,959	1,023,092	0.51

Notes:

1. Column 5 end of period equals column 5 for the previous year plus column 2, minus column 3 plus column 4.
2. Column 6 equals column 5 as a percentage of column 1.

Source: Tribunal Research Branch Data Base and Statistics Canada.

There were significant changes in the product pattern of imports affected by anti-dumping and countervailing measures between the periods 1988-91 and 1992-95. In the 1992-95 period, three product groups, textiles (mainly carpeting), primary metal and other manufacturing, accounted for over 72 percent of imports affected. In the 1988-91 period, four product groups, primary metal, machinery, electrical and agricultural, accounted for close to 70 percent of imports affected.

A similar inter-period analysis shows significant changes in the origin of imports affected by anti-dumping and countervailing measures. The most significant change involved imports from the United States. In the 1992-95 period, they accounted for 59 percent of all imports affected, up from 30 percent in the 1988-91 period. Other changes concerned imports from the European Union, Japan and Pacific Rim countries. The shares of the European Union and Japan were 10.4 and 0.7 percent respectively in the 1992-95 period, down from 21.4 and 19.0 percent in the 1988-91 period. In contrast, the share of Pacific Rim countries' imports increased from 17.0 to 22.3 percent between the two periods.

**Domestic Shipment
Values**

Imports affected as a share of total imports into Canada from various regions have not been high. In the 1992-95 period, the share was highest from Pacific Rim countries: 1.4 percent of imports, the same as in the 1988-91 period. In contrast, the share of imports affected from Japan declined from 1.5 to less than 0.1 percent between the two periods. The corresponding shares for the United States were 0.3 and 0.4 percent.

The value of domestic shipments affected by anti-dumping and countervailing measures is estimated at \$4.3 billion in 1995, compared with \$3.5 billion in 1994. Shipments affected accounted for 2.1 percent of total domestic shipments by all goods producing industries in 1995, up from 1.8 percent in 1994.

**Canadian Domestic Shipments Affected by Anti-Dumping and
Countervailing Measures, 1988-95**

(\$000)

Year	Total Domestic Shipments (1)	Added by New Inquiries (2)	Rescinded and Expired (3)	Value of Domestic Shipments Affected		As a Percentage of Total Domestic Shipments (6)
				Change in Domestic Shipments: Findings in Place (4)	Total (5)	
1988	203,276,644	34,538	206,306	172,191	2,661,967	1.31
1989	215,513,885	3,174	62,383	207,966	2,810,744	1.30
1990	200,129,733	126,900	1,051,010	(96,604)	1,790,030	0.89
1991	184,285,721	688,514	168,567	(52,328)	2,257,649	1.23
1992	177,633,693	340,143	753,245	(126,049)	1,718,498	0.97
1993	180,268,911	777,560	0	31,377	2,527,435	1.40
1994	192,990,714	903,100	263,480	328,284	3,495,339	1.81
1995	201,928,226	753,416	0	72,318	4,321,073	2.14

Notes:

1. Column 5 end of period equals column 5 for the previous year plus column 2, minus column 3 plus column 4.
2. Column 6 equals column 5 as a percentage of column 1.

Source: Tribunal Research Branch Data Base and Statistics Canada.

The primary metal, food and textile industries were the main beneficiaries of anti-dumping and countervailing measures during the 1992-95 period. They accounted for over 77 percent of total domestic shipments affected. In the 1988-91 period, the main beneficiaries were agricultural, primary metal and food industries, accounting for over 75 percent of total domestic shipments affected.

Measures in Force by WTO Members

Anti-Dumping Measures

Reports to the WTO on anti-dumping and countervailing measures generally do not contain sufficient data to estimate the value of imports affected or to compare that value with a country's total imports. Accordingly, the staff analysis is based on the number of measures in place. Such an analysis cannot provide the same assessment of their economic impact as that provided above for Canadian measures.

Between 1990 and 1995, many WTO members increased their use of anti-dumping measures; the number in force increased from 458 to 903. The increase was greatest for the United States, Mexico, Australia and "Other" countries. Included among these countries are Turkey, India, the Republic of Korea and Argentina. There was slower growth in the number of Canadian measures. In 1995, Canada accounted for 10.4 percent of anti-dumping measures in place.

In 1995, about 56 percent of anti-dumping measures by WTO members affected three product groups: primary metal (26.6 percent), chemicals (20.7 percent) and electrical goods (9.1 percent). Except for primary metal, Canadian measures have tended to have a greater effect on imports of other products.

In 1995, most anti-dumping measures were directed at imports from the People's Republic of China, the European Union, Japan, the United States, the Republic of Korea, Brazil and Taiwan. Much of the large growth in the number of measures between 1990 and 1995 affected exports by China, "Other" countries and the European Union. Canadian exports were affected by 1.8 percent of all anti-dumping measures.

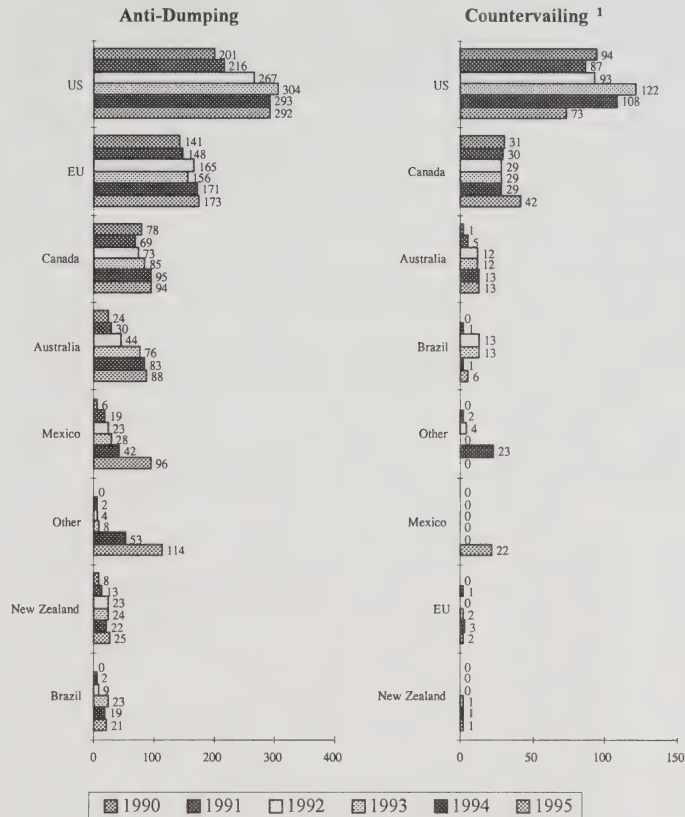
Countervailing Measures

The number of countervailing measures in force declined from a peak of 179 in 1993 to 159 in 1995. The removal of a large number of measures by the United States was not fully offset by new measures by other countries. Although the number of Canadian countervailing measures was small compared to its use of anti-dumping measures, Canada ranked second among WTO members.

In 1995, food product exports were the most affected, accounting for 52 percent of total countervailing measures. Primary metal exports were affected by 27 percent of measures. All Canadian countervailing measures were directed at food imports from the European Union.

Exports from the European Union were the most affected by countervailing measures, accounting for close to 60 percent of the measures in place in 1995. Most of the remainder affected exports by "Other" countries and Brazil. There were four measures directed at Canadian exports, all by the United States.

Number of Measures in Force by WTO Members, 1990-95



1. Each countervailing measure directed at the European Union is counted as an action against imports of each of the member states if the report to the WTO does not specify a particular member state or states. In its analysis of Canadian measures, however, the Tribunal's staff included a member state in the number of actions only if it had exported the products in question to Canada.

Source: GATT and WTO semi-annual reports and published reports by national authorities.

PUBLICATIONS

June 1996

Annual Report for the Fiscal Year Ending March 31, 1996

October 1996

Textile Reference Guide

November 1996

Textile Reference: Annual Status Report

Bulletin

Vol. 8, Nos. 1 - 4

**New Brochure
and Information
Documents**

A brochure and a series of documents designed to inform the public of the work of the Tribunal are available. They include:

- *Introductory Guide on the Canadian International Trade Tribunal*
- *Information on Appeals from Customs, Excise and SIMA Decisions*
- *Information on Dumping and Subsidizing Inquiries and Reviews*
- *Information on Textile Tariff Investigations*
- *Information on Procurement Review*

Publications can be obtained by contacting the Secretary, Canadian International Trade Tribunal, Standard Life Centre, 333 Laurier Avenue West, Ottawa, Ontario K1A 0G7 (613) 993-3595 or they can be accessed on the Tribunal's Web site.

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CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



ANNUAL REPORT

1997-98

June 1998

FOR THE FISCAL YEAR ENDING
MARCH 31, 1998

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 1998**



**Canadian
International
Trade Tribunal**

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CHAIRMAN

PRÉSIDENT

June 30, 1998

The Honourable Paul M. Martin, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 1998.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Pierre Gosselin', written over a large, stylized circular flourish.

Pierre Gosselin

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CHAPTER I

TRIBUNAL HIGHLIGHTS IN FISCAL YEAR 1997-98

Appointment of a New Chairman and a New Member

On December 15, 1997, Mr. Pierre Gosselin was appointed Chairman of the Canadian International Trade Tribunal (the Tribunal). Prior to his appointment to the Tribunal, Mr. Gosselin held various positions in the trade policy and trade relations fields with the departments of Foreign Affairs and International Trade (DFAIT), Industry and Finance. Immediately prior to his appointment, Mr. Gosselin was Director General, Human Resources Development Bureau, at DFAIT. Among his assignments, Mr. Gosselin was Minister and Alternate Permanent Representative to the GATT, Permanent Mission of Canada to the United Nations and to the GATT in Geneva; Director General, Special Trade Relations at DFAIT; Minister-Counselor (commercial) at the Canadian Embassy in Washington, D.C.; and Minister and Permanent Representative to the Food and Agriculture Organization of the United Nations in Rome. Mr. Gosselin replaced Mr. Anthony T. Eytton.

Dumping and Subsidizing Inquiries and Reviews

On November 10, 1997, Mr. Peter F. Thalheimer was appointed to the position of Member of the Tribunal. From 1964 to 1993, he had a private law practice in Timmins, Ontario. Mr. Thalheimer was elected to the House of Commons in 1993, representing the riding of Timmins-Chapleau, and served as Vice-Chair to the Standing Committee on National Resources.

The Tribunal initiated two inquiries, and two were in progress at the beginning of fiscal year 1997-98. During the fiscal year, three findings were issued. The Tribunal also initiated eight reviews of earlier findings or orders, and two were in progress at the beginning of fiscal year 1997-98. It issued seven orders, and three reviews were still in progress at the end of the fiscal year.

Request for a Ruling on the Identity of an Importer

The Deputy Minister of National Revenue (the Deputy Minister) requested the Tribunal to rule, pursuant to subsection 89(1) of the *Special Import Measures Act* (SIMA), on the identity of an importer in Canada of fresh garlic originating in or exported from the People's Republic of China that was the subject of the finding issued by the Tribunal on March 21, 1997, in Inquiry No. NQ-96-002. These proceedings were still in progress at the end of fiscal year 1997-98.

Appeals of Decisions of the Department of National Revenue

The Tribunal issued decisions on 177 appeals from decisions of the Department of National Revenue (Revenue Canada) made under the *Customs Act*, the *Excise Tax Act* and SIMA.

Trade and Tariff References

On December 17, 1997, pursuant to a reference of the Governor in Council, on the recommendation of the Minister of Finance, the Minister of Agriculture and Agri-Food and the Minister for International Trade, the Tribunal undertook an inquiry into the importation of dairy product blends outside the coverage of Canada's tariff-rate quotas. The Tribunal will submit its report by July 1, 1998.

Pursuant to a reference from the Minister of Finance dated July 6, 1994, the Tribunal investigates requests from domestic producers for tariff relief on imported textile inputs and makes recommendations in respect of those requests to the Minister of Finance. During fiscal year 1997-98, the Tribunal issued five reports to the Minister of Finance concerning requests for tariff relief. Revised terms of reference were issued to the Tribunal by the Minister of Finance on November 26, 1997. In addition, the Tribunal's third annual status report on the investigation process was submitted to the Minister of Finance on January 7, 1998.

Procurement Review

The Tribunal provides an opportunity for redress for potential suppliers concerned about the propriety of the procurement process relative to contracts covered by the *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (AIT) and the World Trade Organization (WTO) *Agreement on Government Procurement* (AGP). The Tribunal received 54 complaints during the fiscal year.

The Tribunal issued 16 written determinations of its findings and recommendations. Seven of these determinations related to cases that were in progress at the end of fiscal year 1996-97. In 7 of the 16 written determinations, the complaints were determined to be valid or valid in part.

Review of SIMA

On March 19, 1998, the government tabled proposed legislative amendments to improve SIMA. As changes will also be made to certain provisions of the *Canadian International Trade Tribunal Act* (the CITT Act) primarily as they relate to inquiries under SIMA, the Tribunal staff was consulted on the proposed legislative changes.

**Access to
Tribunal notices,
decisions and
publications**

During fiscal year 1997-98, the Tribunal completed the retrospective conversion of all its decisions, a project aimed at storing, on its Web site (www.citt.gc.ca), all its decision issued since its establishment in December 1988. The Tribunal's Web site, therefore, constitutes an exhaustive repository of all Tribunal decisions, as well as other information relating to the Tribunal.

The Tribunal also makes available its notices and decisions on *Factsline*, a service that can be accessed using a telecopier.

Finally, Tribunal notices and decisions are published in the *Canada Gazette*. Those relating to procurement complaints are also published in *Government Business Opportunities*.

As of July 1997, the Tribunal has discontinued the publication of the Bulletin in paper form. Issues of the Bulletin, as well as back issues, are available on the Tribunal's Web site.

**Meeting Statutory
Deadlines
(Timeliness)**

All of the Tribunal inquiries were completed on time, and decisions were issued within the statutory deadlines. For appeals of Revenue Canada decisions that are not subject to statutory deadlines, the Tribunal usually issues, within 120 days of the hearing, a decision on the matter in dispute, including the reasons for its decision.

Tribunal's Caseload in Fiscal Year 1997-98

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated	Cases Outstanding (March 31, 1998)
SIMA ACTIVITIES	1	1	2	2	-	-
References (Advice)						
Inquiries	2	2	4	3	-	1
Public Interest Requests	-	1	1	1	-	-
Requests for Review	-	3	3	3	-	-
Expiries ¹	3	7	10	5	3	2
Reviews	2	8	10	7	-	3
APPEALS						
<i>Customs Act</i>	331	101	432	129	72	231
<i>Excise Tax Act</i>	254	13	267	31	49	187
SIMA	52	26	78	17	2	59
Total	637	140	777	177	123	477
ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES						
Textile Reference						
Requests for Tariff Relief	10	20	30	11 ²	-	19
Expiries ¹	-	4	4	1	-	3
Reviews	-	1	1	1	-	-
Economic, Trade and Tariff-Related Matters	-	1	1	-	-	1
PROCUREMENT REVIEW ACTIVITIES						
Complaints	9	54	63	16	36	11

1. As a result of a different method of reporting expiries, the first column refers to expiries for which decisions on whether or not to review had not been made prior to the end of the previous fiscal year. The fourth column refers to decisions to review.

2. The Tribunal actually issued 5 reports to the Minister of Finance which related to 11 requests for tariff relief.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the CITT Act, the *Canadian International Trade Tribunal Regulations* (the CITT Regulations), the Tribunal's Rules of Procedure, SIMA, the *Customs Act* and the *Excise Tax Act*.

Mandate

The Tribunal's primary mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry;
- hear appeals of Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations;
- conduct inquiries into complaints by potential suppliers concerning procurement by the federal government that is covered by NAFTA, the AIT and the AGP;
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance.

Method of Operations

In carrying out most of its responsibilities, the Tribunal conducts hearings that are open to the public. These are normally held in Ottawa, Ontario, the location of the Tribunal's offices, although hearings may also be held elsewhere in Canada. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, conducted generally by a panel of three members, should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information, even when it is commercially confidential. The CITT Act contains provisions that strictly control access to confidential information.

The Tribunal's decisions may be reviewed by or appealed to, as appropriate, the Federal Court of Canada and, ultimately, the Supreme Court of Canada, or a binational panel under NAFTA, in the case of a decision affecting US and/or Mexican interests. Governments that are members of the WTO may appeal the Tribunal's decisions to a dispute settlement panel under the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.

Membership

The Tribunal may be composed of nine full-time members, including a Chairman and two Vice-Chairs, who are appointed by the Governor in Council for a term of up to five years that is renewable one time. A maximum of five additional members may be temporarily appointed. The Chairman is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently 8 in number, are supported by a permanent staff of 86 people. Its principal officers are the Executive Director, Research, responsible for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; the Secretary, responsible for administration, relations with the public, dealings with other government departments and other governments, and the court registrar functions of the Tribunal; the General Counsel, responsible for the provision of legal services to the Tribunal; and the Director of the Procurement Review Division, responsible for the investigation of complaints by potential suppliers concerning any aspect of the procurement process.

Organization

CHAIRMAN

Pierre Gosselin

VICE-CHAIRS

Raynald Guay
Patricia M. Close

MEMBERS

Arthur B. Trudeau*
Robert C. Coates, Q.C.
Anita Szlczak
Charles A. Gracey*
Peter F. Thalheimer

SECRETARIAT

Secretary
Michel P. Granger

RESEARCH BRANCH

Executive Director of Research
Ronald W. Erdmann

PROCUREMENT REVIEW DIVISION

Director
Jean Archambault

LEGAL SERVICES BRANCH

General Counsel
Gerry Stobo

* Temporary Member

Legislative Mandate of the Tribunal

Section	Authority
CITT Act	
18	Inquiries on Economic, Trade or Commercial Interests of Canada by Reference from the Governor in Council
19	Inquiries Into Tariff-Related Matters by Reference from the Minister of Finance
19.01	Safeguard Inquiries Concerning Goods Imported from the United States and Mexico
19.02	Mid-Term Reviews of Safeguard Measures and Report
20	Safeguard Inquiries Concerning Goods Imported Into Canada and Inquiries Into the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
23(1.01) and (1.02)	Safeguard Complaints by Domestic Producers Concerning Goods Imported from the United States and Mexico
30.08 and 30.09	Extension Inquiries of Safeguard Measures and Report
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts

SIMA (Anti-Dumping and Countervailing Duties)

33, 34, 35 and 37	Advice to Deputy Minister
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
44	Recommencement of Inquiry (on Remand from the Federal Court of Canada or a Binational Panel)
45	Advice on Public Interest Considerations
61	Appeals of Re-Determinations of the Deputy Minister Made Pursuant to Section 59 Concerning Whether Imported Goods are Goods of the Same Description as Goods to which a Tribunal Finding Applies, Normal Values and Export Prices or Subsidies
76	Reviews of Findings of Injury Initiated by the Tribunal or at the Request of the Deputy Minister or Other Interested Persons
76.1	Reviews of Findings of Injury Initiated at the Request of the Minister of Finance
89	Rulings on Who is the Importer

Legislative Mandate of the Tribunal (cont'd)

Section	Authority
<i>Customs Act</i>	
67	Appeals of Decisions of the Deputy Minister Concerning Value for Duty and Origin and Classification of Imported Goods
68	New Hearings on Remand from the Federal Court of Canada
70	References of the Deputy Minister Relating to the Tariff Classification or Value for Duty of Goods
<i>Excise Tax Act</i>	
81.19, 81.21, 81.22, 81.23 and 81.33	Appeals of Assessments and Determinations of the Minister of National Revenue
81.32	Requests for Extension of Time for Objection or Appeal
<i>Softwood Lumber Products Export Charge Act</i>	
18	Appeals of Assessments and Determinations of the Minister of National Revenue
<i>Energy Administration Act</i>	
13	Declarations Concerning the Amount of Oil Export Charge

CHAPTER III

DUMPING AND SUBSIDIZING INQUIRIES AND REVIEWS

The Process

Under SIMA, Canadian producers may have access to anti-dumping and countervailing duties to offset unfair injurious competition from goods exported to Canada:

- 1) at prices lower than sales in the home market or lower than the cost of production (dumping), or
- 2) that have benefited from certain types of government grants or other assistance (subsidizing).

The determination of dumping and subsidizing is the responsibility of Revenue Canada. It is the Tribunal that determines whether such dumping or subsidizing has caused “material injury” or “retardation” or is threatening to cause material injury to a domestic industry.

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Deputy Minister. The Deputy Minister may then initiate a dumping or subsidizing investigation leading to a preliminary and then a final determination of dumping or subsidizing. The Tribunal commences its inquiry when the Deputy Minister issues a preliminary determination. Revenue Canada levies provisional duties on imports from the date of the preliminary determination.

Inquiries

When it commences an inquiry, the Tribunal tries to make all interested parties aware of the inquiry. It issues a notice of commencement of inquiry that is published in the *Canada Gazette* and forwarded to all known interested parties.

In conducting inquiries, the Tribunal requests information from interested parties, receives representations and holds public hearings. Parties participating in these proceedings may conduct their own cases or be represented by counsel. The Tribunal staff carries out extensive research for each inquiry. The Tribunal sends questionnaires to manufacturers, importers, purchasers and, in some inquiries, exporters. Questionnaire responses are the primary source of information for staff reports. These reports focus on the factors that the Tribunal considers in arriving at decisions regarding material injury or retardation or threat of material injury to a

domestic industry. The reports become part of the case record and are made available to counsel and parties. Confidential or business-sensitive information is protected in accordance with provisions of the CITT Act. Only independent counsel who have filed declarations and undertakings may have access to such confidential information.

The CITT Regulations prescribe factors that the Tribunal may consider in its determination of whether the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. These factors include, among others, the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on prices and the impact of the dumped or subsidized goods on production, sales, market shares, profits, employment and utilization of production capacity.

The Tribunal holds a public hearing about 90 days after the commencement of the inquiry following receipt of the Deputy Minister's final determination of dumping or subsidizing. At the public hearing, domestic producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. Importers and, sometimes, exporters and users of the goods usually challenge the domestic producers' case. After cross-examination by parties and then examination by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. In many inquiries, the Tribunal calls witnesses who are knowledgeable about the industry and market in question. Parties may also seek exclusions from a Tribunal finding of material injury or retardation or threat of material injury to a domestic industry.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Deputy Minister. The Tribunal has an additional 15 days to issue a statement of reasons explaining its finding. A Tribunal finding of material injury or retardation or threat of material injury to a domestic industry is the legal authority for the imposition of anti-dumping or countervailing duties by Revenue Canada.

Advice Given Under Section 37 of SIMA

When the Deputy Minister decides not to initiate a dumping or subsidizing investigation because there is insufficient evidence of injury, the Deputy Minister or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Deputy Minister discloses a reasonable indication that the dumping or subsidizing has caused material injury or retardation or is threatening to cause material injury to a domestic industry. When the Deputy Minister decides to initiate an investigation, a similar recourse is available to the Deputy Minister or any person or government under section 34 of SIMA.

Section 37 of SIMA requires the Tribunal to render its advice within 30 days. The Tribunal makes its decision, without holding a public hearing, on the basis of the information before the Deputy Minister when the decision regarding initiation was reached.

The Tribunal issued two advices during fiscal year 1997-98. They concerned *Certain Hot-Rolled Carbon Steel Plate* (Reference No. RE-96-002) and *Certain Stainless Steel Round Bar* (Reference No. RE-97-001). The Tribunal concluded in both instances that the evidence before the Deputy Minister disclosed a reasonable indication that the dumping had caused material injury or was threatening to cause material injury to a domestic industry. *Certain Hot-Rolled Carbon Steel Plate* subsequently proceeded to an inquiry under section 42 of SIMA. In *Certain Stainless Steel Round Bar*, the Deputy Minister had not made a preliminary determination regarding dumping before the end of the fiscal year.

**Inquiries
Completed
in 1997-98**

The Tribunal completed three inquiries under section 42 of SIMA in fiscal year 1997-98. Two inquiries concerned construction materials, Inquiry No. NQ-96-003, *Polyiso Insulation Board*, and Inquiry No. NQ-96-004, *Concrete Panels*. In 1996, the Canadian market for polyiso insulation board exceeded \$60 million. *Concrete Panels* involved a regional industry in British Columbia and Alberta with a market of \$1 million. Inquiry No. NQ-97-001, *Certain Hot-Rolled Carbon Steel Plate*, concerned a steel product. The Canadian market for carbon steel plate was close to \$500 million in 1997.

***Polyiso Insulation
Board***

NQ-96-003

***Finding:
Injury
(April 11, 1997)***

This inquiry involved several exporters and importers of dumped polyiso insulation board from the United States. Polyiso insulation board is used to insulate walls and roofs in residential and commercial construction. Exeltherm Inc. (Exeltherm) of Cornwall, Ontario, accounted for over 90 percent of Canadian production in 1996. The Tribunal found that the dumped imports had caused material injury to the domestic industry, but excluded from its finding polyiso insulation board imported into British Columbia and certain goods imported by manufacturers of wood drying kilns.

The Tribunal found that the dumping of polyiso insulation board had adversely affected Exeltherm's production, capacity utilization, sales volumes and prices, gross margins and overall profitability. Although Exeltherm was able to increase sales volumes, it could not make any significant gains in market share, as US imports increased strongly in both 1994 and 1995. Exeltherm's prices declined despite an increase in raw material costs and strong increases in demand for polyiso insulation board. Exeltherm's evidence demonstrated that it had either lost business to lower-priced US products or won business by matching lower

competing bids from US suppliers. The Tribunal found that, although somewhat improved in 1996, Exeltherm's gross margins were still at injuriously low levels and that its net income performance was unsatisfactory over the inquiry period.

Concrete Panels

NQ-96-004

*Finding:
Injury
(June 27, 1997)*

This inquiry involved dumped imports of concrete panels sold in British Columbia and Alberta by Custom Building Products of Canada Ltd. (CBP) (importer) and Custom Building Products (exporter). Concrete panels are a waterproof cement tile backing board used in residential and commercial construction. Bed-Roc Industries Limited (Bed-Roc) of Surrey, British Columbia, was the sole regional producer. The Tribunal found that the dumping of concrete panels had caused material injury to a domestic industry in British Columbia and Alberta, a regional market.

Despite its transportation cost advantage, Bed-Roc participated only marginally in a rapidly growing market. While it maintained sales volumes, Bed-Roc did so only by lowering its prices to meet those of CBP. The Tribunal's review of the pricing activities of CBP and its Canadian distributor, CanWel Distribution Ltd., largely confirmed Bed-Roc's allegations of price erosion and lost sales which had led to declining revenues and gross margins and a significant net loss in Bed-Roc's 1997 fiscal year.

The Tribunal considered factors other than dumping, such as Bed-Roc's marketing strategies and competition from undumped imports, which might have caused the injury to Bed-Roc. The Tribunal found the effects of these factors on Bed-Roc's performance to be minimal in comparison with the materially injurious effects of the dumping.

**Certain Hot-Rolled
Carbon Steel Plate**

NQ-97-001

*Finding:
Threat of Injury
(October 27, 1997)*

This inquiry involved an importer and several exporters of dumped carbon steel plate from Mexico, the People's Republic of China, the Republic of South Africa and the Russian Federation. Algoma Steel Inc., of Sault Ste. Marie, Ontario, Stelco Inc. of Hamilton, Ontario, and IPSCO Inc. of Regina, Saskatchewan, account for most of the Canadian production of carbon steel plate, a product used in construction and many manufactured goods. The Tribunal found that the dumping had caused injury to the domestic industry, but was not persuaded that the injury was material. However, the Tribunal found that the dumping of carbon steel plate threatened to cause material injury to the domestic industry.

Considerable excess capacity in the named countries, which had limited access to other export markets, combined with increasing volumes of dumped imports in Canada, led the Tribunal to conclude that a continuation of and an

Inquiries in Progress at the End of 1997-98

Public Interest Consideration Under Section 45 of SIMA

increase in dumped imports threatened to cause material injury. The Tribunal found that import prices fell faster than domestic prices in 1997 and that the price gap between the two had widened. In the absence of anti-dumping duties, there was a threat of injury through price erosion and suppression and lost market share.

The Tribunal also considered the current and potential impact on the market of prices of carbon steel plate cut from coil by steel centres and plate imported from the United States, as well as the new capacity that the domestic mills had announced. With respect to plate cut from coil and the US plate, the Tribunal felt that neither was likely to have a significant impact on the market. With respect to the new capacity, the Tribunal was of the opinion that uncertainties about installation dates and product mix made it impossible to predict the impact that it might have on the market for carbon steel plate.

There was one inquiry in progress at the end of fiscal year 1997-98: *Certain Prepared Baby Foods* (Inquiry No. NQ-97-002). It involved dumped imports from the United States. The sole domestic producer, H.J. Heinz Company of Canada Ltd. of Toronto, Ontario, Gerber Products Company and its related importer in Canada and the Director of Investigation and Research, *Competition Act*, were participants in the inquiry.

Table 1 summarizes the Tribunal's inquiry activities during the fiscal year.

Where, after a finding of injury or threat of injury, on the basis of submissions, the Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties may not be in the public interest, it reports this to the Minister of Finance with a statement of the facts and reasons that led to its conclusions. The Minister of Finance decides whether there should be any reduction in duties.

During the inquiry, interested parties may make a request to make representations on the matter of public interest. Representations are made after the inquiry. The Tribunal will conduct a public interest investigation if it considers that there are exceptional circumstances.

During fiscal year 1997-98, several distributors and an exporter made public interest representations after the Tribunal's finding of injury in *Polyiso Insulation Board* (Inquiry No. NQ-96-003). In its consideration of the representations (Public Interest Investigation No. PB-97-001), the Tribunal stated that the circumstances did not justify a public interest investigation. The Tribunal observed that competition among Canadian suppliers and undumped sales from the United States would limit increases in prices expected after a finding of injury.

Requests for Review

Several paediatric and health organizations, as well as the Director of Investigation and Research, *Competition Act*, have indicated that they will make public interest representations should the Tribunal issue a finding of injury or threat of injury in *Certain Prepared Baby Foods* (Inquiry No. NQ-97-002).

The Tribunal may review its findings of injury or orders at any time, on its own initiative or at the request of the Deputy Minister or any other person or government (subsection 76(2) of SIMA). However, the Tribunal will initiate a review only if it determines that one is warranted, usually on the basis of changed circumstances. In such a review, the Tribunal determines if the changed circumstances are such that the finding or order remains necessary. In fiscal year 1997-98, the Tribunal received three requests for review of three findings.

The British Columbia Fruit Growers' Association requested that the Tribunal "provide a variance" to its finding of February 9, 1995, in *Delicious and Red Delicious Apples* (Inquiry No. NQ-94-001). The Tribunal decided that a review of the finding was not warranted (Request for Review No. RD-97-001).

The Garlic Growers Association of Ontario requested a review of the Tribunal's finding in *Fresh Garlic* (Inquiry No. NQ-96-002) to extend the coverage of the finding to a full calendar year, from the period of July 1 to December 31 during which the finding now applies. The Tribunal decided that a review was not warranted (Request for Review No. RD-97-002).

Russel Metals Inc. and Wirth Limited requested a review of the Tribunal's finding in *Certain Hot-Rolled Carbon Steel Plate* (Inquiry No. NQ-97-001). The Tribunal decided that a review was not warranted (Request for Review No. RD-97-003).

Expiries and Reviews

Subsection 76(5) of SIMA provides that a finding or an order expires after five years, unless a review has been initiated. It is Tribunal policy to notify parties nine months prior to the expiry date of a finding or an order. If a review is requested, the Tribunal will initiate one if it determines that it is warranted.

During fiscal year 1997-98, the Tribunal issued seven notices of expiry. The Tribunal decided that reviews were warranted in five cases, which included decisions that were pending at the beginning of the fiscal year, and initiated reviews. Decisions on whether to initiate reviews in two other cases, *Preformed Fibreglass Pipe Insulation* (Notice of Expiry No. LE-97-006) and *Tillage Tools* (Notice of Expiry No. LE-97-007), were pending at the end of the fiscal year.

Reviews Completed in 1997-98

The purpose of a review is to determine if anti-dumping or countervailing duties remain necessary. In the case of reviews upon expiry, the Tribunal assesses whether dumping or subsidizing is likely to continue or resume and, if so, whether the dumping or subsidizing is likely to cause material injury to a domestic industry. The Tribunal conducts reviews according to procedures that are similar to those in an inquiry.

Upon completion of a review, the Tribunal issues an order with reasons, pursuant to subsection 76(4) of SIMA. The Tribunal may rescind or continue a finding or an order with or without amendment. If the Tribunal continues a finding or an order, it remains in force for a further five years unless a review has been initiated and the finding or order is rescinded. If the finding or order is rescinded, imports are no longer subject to anti-dumping or countervailing duties.

In fiscal year 1997-98, the Tribunal completed seven reviews.

The Tribunal continued, with amendments, its finding in *Machine Tufted Carpeting* (Review No. RR-96-004) respecting dumped imports from the United States. The Canadian Carpet Institute and Interface Flooring Systems (Canada), Inc., as well as exporters from the United States, participated in the review.

The Tribunal continued its finding in *Fresh Iceberg (Head) Lettuce* (Review No. RR-97-002) respecting dumped imports from the United States. The BC Vegetable Marketing Commission participated in the review.

The Tribunal continued, with an amendment, its finding in *Bicycles and Frames* (Review No. RR-97-003) respecting dumped imports from Taiwan and the People's Republic of China. The Canadian Bicycle Manufacturers Association and several Canadian manufacturers, as well as the Retail Council of Canada, several Canadian distributors and exporters in Taiwan and the People's Republic of China participated in the review.

The Tribunal continued, with an amendment, its order in *Waterproof Rubber Footwear* (Review No. RR-97-001) with respect to dumped imports from the People's Republic of China, but rescinded the order with respect to imports from the Czech Republic, the Slovak Republic, Poland, the Republic of Korea, Taiwan, Malaysia, the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Slovenia, the Federal Republic of Yugoslavia and Hong Kong, China. The Shoe Manufacturers' Association of Canada and an association representing exporters in the People's Republic of China participated in the review.

Reviews in Progress at the End of 1997-98

The Tribunal rescinded its order in *Fresh, Whole, Yellow Onions* (Review No. RR-96-005) with respect to dumped imports from the United States. The BC Vegetable Marketing Commission and exporters from the United States participated in the review.

The Tribunal rescinded its finding in *Gypsum Board* (Review No. RR-97-004) with respect to dumped imports from the United States. Westroc Inc., Georgia-Pacific Corporation and CGC Inc., Canadian manufacturers seeking the continuation of the finding, and several exporters seeking a rescission of the finding participated in the review.

The Tribunal rescinded its order in *Pocket Photo Albums and Refill Sheets* (Review No. RR-97-005) respecting dumped imports from Japan, the Republic of Korea, the People's Republic of China, Taiwan, Singapore, Malaysia, the Federal Republic of Germany and Hong Kong, China. The Canadian manufacturers withdrew from the review after its initiation.

Three reviews were in progress at the end of the fiscal year. They were the findings in: (1) *Certain Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate* (Review No. RR-97-006) respecting dumped imports from Belgium, the Federative Republic of Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the Former Yugoslav Republic of Macedonia; (2) *Certain Cold-Rolled Steel Sheet* (Review No. RR-97-007) with respect to dumped imports from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States; and (3) *Certain Copper Pipe Fittings* (Review No. RR-97-008) with respect to dumped imports by certain exporters in the United States.

Table 2 summarizes the Tribunal's review activities during the fiscal year. Table 3 lists Tribunal findings and orders in force as of March 31, 1998.

Judicial or Panel Review of SIMA Decisions

Any person affected by Tribunal findings or orders can request judicial review by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law. In cases involving goods from the United States and Mexico, requests may be made for judicial review by the Federal Court of Canada or by a binational panel. Table 4 lists the Tribunal's decisions under section 43, 44 or 76 of SIMA that were before the Federal Court of Canada for judicial review or a binational panel in fiscal year 1997-98.

The Federal Court of Canada quashed an application to review the Tribunal's remand finding of no material injury, dated June 2, 1997, under section 44 of

WTO Dispute Resolution

SIMA in the case of *Certain Dry Pasta* (Inquiry No. NQ-95-003R). The Federal Court of Canada dismissed an application to review the Tribunal's order in *Fresh, Whole, Yellow Onions* (Review No. RR-96-005). At the end of the fiscal year, proceedings had been suspended with respect to an application for judicial review by the Federal Court of Canada of the Tribunal's finding in *Polyiso Insulation Board* (Inquiry No. NQ-96-003). With regard to *Certain Hot-Rolled Carbon Steel Plate* (Inquiry No. NQ-97-001), the application before the Federal Court of Canada was discontinued.

Also at the end of the fiscal year, binational panels had not yet heard the applications to review the Tribunal's finding (United States) in *Concrete Panels* (Inquiry No. NQ-96-004) and the Tribunal's finding (Mexico) in *Certain Hot-Rolled Carbon Steel Plate* (Inquiry No. NQ-97-001).

Governments that are members of the WTO may appeal Tribunal injury findings or orders in dumping and countervailing cases to the WTO. The launching of an appeal must be preceded by inter-governmental consultations. There are no Tribunal findings or orders before the dispute settlement bodies of the WTO.

TABLE 1

Findings Issued Under Section 43 of SIMA Between April 1, 1997, and March 31, 1998, and Inquiries Under Section 42 of SIMA in Progress at Year End

Inquiry No.	Product	Country	Date of Finding	Finding
NQ-96-003	Polyiso Insulation Board	United States	April 11, 1997	Injury
NQ-96-004	Concrete Panels	United States	June 27, 1997	Injury
NQ-97-001	Certain Hot-Rolled Carbon Steel Plate	Mexico, People's Republic of China, Republic of South Africa and Russian Federation	October 27, 1997	Threat of Injury
NQ-97-002	Certain Prepared Baby Foods	United States	In Progress	

TABLE 2

Orders Issued Under Section 76 of SIMA Between April 1, 1997, and March 31, 1998, and Reviews in Progress at Year End

Review No.	Product	Country	Date of Order	Order
RR-96-004	Machine Tufted Carpeting	United States	April 21, 1997	Finding Continued with Amendments
RR-96-005	Fresh, Whole, Yellow Onions	United States	May 21, 1997	Order Rescinded
RR-97-001	Waterproof Rubber Footwear	People's Republic of China	October 20, 1997	Order Continued with Amendment
		Czech Republic, Slovak Republic, Poland, Republic of Korea, Taiwan, Malaysia, Republic of Bosnia and Herzegovina, Republic of Croatia, Former Yugoslav Republic of Macedonia, Republic of Slovenia, Federal Republic of Yugoslavia and Hong Kong, China		Order Rescinded
RR-97-002	Fresh Iceberg (Head) Lettuce	United States	November 28, 1997	Finding Continued
RR-97-003	Bicycles and Frames	Taiwan and People's Republic of China	December 10, 1997	Finding Continued with Amendment
RR-97-004	Gypsum Board	United States	January 19, 1998	Finding Rescinded
RR-97-005	Pocket Photo Albums and Refill Sheets	Japan, Republic of Korea, People's Republic of China, Taiwan, Singapore, Malaysia, Federal Republic of Germany and Hong Kong, China	February 24, 1998	Order Rescinded
RR-97-006	Certain Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Federative Republic of Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	In Progress	
RR-97-007	Certain Cold-Rolled Steel Sheet	Federal Republic of Germany, France, Italy, United Kingdom and United States	In Progress	
RR-97-008	Certain Copper Pipe Fittings	United States	In Progress	

TABLE 3

Findings and Orders in Force as of March 31, 1998¹

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-92-007	May 6, 1993	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Federative Republic of Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	
NQ-92-009	July 29, 1993	Cold-Rolled Steel Sheet	Federal Republic of Germany, France, Italy, United Kingdom and United States	
NQ-93-001	October 18, 1993	Copper Pipe Fittings	United States	
NQ-93-002	November 19, 1993	Preformed Fibreglass Pipe Insulation with a Vapour Barrier	United States	
RR-93-001	November 23, 1993	Tillage Tools	Federative Republic of Brazil	ADT-11-83 (December 28, 1983) R-9-88 (November 24, 1988)
RR-93-003	January 18, 1994	Paint Brushes and "Heads"	People's Republic of China	ADT-6-84 (June 20, 1984) R-7-84 (September 28, 1984) R-13-88 (January 19, 1989)
NQ-93-003	April 22, 1994	Synthetic Baler Twine	United States	
NQ-93-004	May 17, 1994	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	
NQ-93-005	June 22, 1994	12-Gauge Shotshells	Czech Republic and Republic of Hungary	
NQ-93-006	July 20, 1994	Black Granite Memorials and Black Granite Slabs	India	

1. This table shows the findings and orders in force. To determine the precise product coverage, refer to the Review No. or Inquiry No. as identified in the first column of the table.

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-93-007	July 29, 1994	Corrosion-Resistant Steel Sheet Products	Australia, Federative Republic of Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	
NQ-94-001	February 9, 1995	Delicious and Red Delicious Apples	United States	
RR-94-002	March 21, 1995	Canned Ham and Canned Pork-Based Luncheon Meat	Denmark, Netherlands and European Union	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990)
RR-94-003	May 2, 1995	Women's Footwear	People's Republic of China	NQ-89-003 (May 3, 1990)
RR-94-004	June 5, 1995	Carbon Steel Welded Pipe	Republic of Korea	ADT-6-83 (June 28, 1983) RR-89-008 (June 5, 1990)
RR-94-005	July 5, 1995	Refill Paper	Federative Republic of Brazil	NQ-89-004 (July 6, 1990)
RR-94-006	August 25, 1995	Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves	Republic of Korea, People's Republic of China, Singapore, Malaysia, Taiwan, Indonesia, Thailand, the Philippines and Hong Kong, China	ADT-4-74 (January 24, 1975) R-3-84 (August 24, 1984) CIT-18-84 (April 26, 1985) CIT-10-85 (February 14, 1986) CIT-5-87 (November 3, 1987) RR-89-012 (September 4, 1990) NQ-90-003 (January 2, 1991)
RR-94-007	September 14, 1995	Whole Potatoes	United States	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986) RR-89-010 (September 14, 1990)
NQ-95-001	October 20, 1995	Caps, Lids and Jars	United States	

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-95-002	November 6, 1995	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	
RR-95-001	July 5, 1996	Oil and Gas Well Casing	Republic of Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986) RR-90-005 (June 10, 1991)
RR-95-002	July 25, 1996	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand, Venezuela and Federative Republic of Brazil	NQ-90-005 (July 26, 1991) NQ-91-003 (January 23, 1992)
RR-96-001	September 12, 1996	Stainless Steel Welded Pipe	Taiwan	NQ-91-001 (September 5, 1991)
NQ-96-002	March 21, 1997	Fresh Garlic	People's Republic of China	
NQ-96-003	April 11, 1997	Polyiso Insulation Board	United States	
RR-96-004	April 21, 1997	Machine Tufted Carpeting	United States	NQ-91-006 (April 21, 1992)
NQ-96-004	June 27, 1997	Concrete Panels	United States	
RR-97-001	October 20, 1997	Waterproof Rubber Footwear	People's Republic of China	ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987) RR-92-001 (October 21, 1992)
NQ-97-001	October 27, 1997	Certain Hot-Rolled Carbon Steel Plate	Mexico, People's Republic of China, Republic of South Africa and Russian Federation	
RR-97-002	November 28, 1997	Fresh Iceberg (Head) Lettuce	United States	NQ-92-001 (November 30, 1992)
RR-97-003	December 10, 1997	Bicycles and Frames	Taiwan and People's Republic of China	NQ-92-002 (December 11, 1992)

TABLE 4

Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 1997, and March 31, 1998¹

Case No.	Product	Country of Origin	Forum	File No./ Status
NQ-95-003R	Certain Dry Pasta	Italy	FC	A—252—97 Application quashed
NQ-95-003R	Certain Dry Pasta	Italy	FC	A—491—97 Application dismissed
NQ-96-003	Polyiso Insulation Board	United States	FC	A—394—97 Proceedings suspended
NQ-96-004	Concrete Panels	United States	BP	CDA-97-1904-01
NQ-97-001	Certain Hot-Rolled Carbon Steel Plate	Mexico	BP	CDA-97-1904-02
		People's Republic of China and Republic of South Africa	FC	A—856—97 Application discontinued
RR-96-005	Fresh, Whole, Yellow Onions	United States	FC	A—435—97 Application dismissed

Note: FC — Federal Court of Canada
BP — Binational Panel

CHAPTER IV

APPEALS

Introduction

The Tribunal, among its other duties, hears appeals from decisions of the Minister of National Revenue (the Minister) under the *Excise Tax Act* or of the Deputy Minister under the *Customs Act* and SIMA. When the federal sales tax was replaced by the Goods and Services Tax on January 1, 1990, there were a number of appeals awaiting determination by the Deputy Minister and decisions awaiting appeal to the Tribunal. As a result, in the last few years, the majority of appeals heard and decided by the Tribunal involved federal sales tax assessments and determinations. However, as the bulk of these appeals have now made their way through the appeal process at Revenue Canada and the Tribunal, the latter is hearing and deciding more appeals involving the tariff classification and the value for duty of imported goods under the *Customs Act*. The Tribunal also hears and decides appeals concerning the application, to imported goods, of a Tribunal finding or order concerning dumping or subsidizing and the normal value or export price or subsidy of imported goods under SIMA.

Although the Tribunal strives to be informal and accessible, there are certain procedures and time constraints that are imposed by law and by the Tribunal itself in order to provide quality service to the public in an efficient manner. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

Under the Tribunal's Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a "brief." Generally, the brief states under which act the appeal is launched, gives an indication of the points at issue between the appellant and the Minister or Deputy Minister (in legal terminology, the Minister or the Deputy Minister is called the respondent) and states why the appellant believes that the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth Revenue Canada's position. Once these formalities are out of the way, the Secretary of the Tribunal contacts both parties in order to schedule a hearing. Hearings are generally conducted in public, before Tribunal members.

Hearings

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their cases. They also enable the Tribunal to have the best information possible to make a decision. As in a court, the appellant and the respondent can call witnesses, and these witnesses are questioned under oath by the opposing parties, as well as by the members, in order to test the validity of their evidence. When all the evidence is gathered, parties may present arguments in support of their respective positions.

The option of a file hearing is also offered to the appellant. Where a hearing is not required, the Tribunal may dispose of the matter on the basis of the written documentation before it. Rule 25 of the Tribunal's Rules of Procedure allows the Tribunal to proceed in this manner. Before deciding to proceed in this manner, the Tribunal requires that the appellant and respondent consent to disposing of the appeal by way of a file hearing and file with the Tribunal an agreed statement of facts in addition to their submissions. The Tribunal then publishes a notice of the file hearing in the *Canada Gazette* so that other interested persons can make their own views known.

The Tribunal also hears appeals by way of electronic transmission, either by teleconference or videoconference.

Teleconference hearings are used mainly to dispose of preliminary motions and jurisdictional issues where witnesses are not required to attend or give evidence.

Videoconference hearings are used as an alternative to holding hearings in remote locations across Canada or requiring parties from outside Ontario or Quebec to present themselves at the Tribunal's premises in Ottawa. This option of a videoconference hearing is generally used where there are no issues of credibility. The procedures are very similar to hearings held before the Tribunal at its premises. However, the Tribunal requires that written materials, exhibits, aids to arguments, etc., be filed with the Tribunal prior to the videoconference hearing.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute, including the reasons for its decision.

If the appellant, the respondent or an intervener disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Canada.

Appeals Considered in the Last Fiscal Year

During fiscal year 1997-98, the Tribunal heard 188 appeals of which 141 related to the *Customs Act*, 30 to the *Excise Tax Act* and 17 to SIMA. Decisions were issued in 177 cases, of which 128 were heard during fiscal year 1997-98.

Decisions on Appeals

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	78	19	32	129
<i>Excise Tax Act</i>	8	2	21	31
SIMA	1	-	16	17

Table 1 of this chapter lists decisions on appeals rendered in fiscal year 1997-98.

Summary of Selected Decisions

The following are summaries of a representative sample of significant decisions in appeals under section 67 of the *Customs Act* concerning the determination of the value for duty of imported goods under subsection 48(5) of that act. These summaries have been prepared for general information purposes only and have no legal status.

Selling Commissions

**DMG Trading Co. Ltd.
v. The Deputy
Minister of National
Revenue**

AP-96-076

*Decision:
Appeal dismissed
(August 28, 1997)*

In this appeal, the Tribunal considered whether certain selling commissions were properly added to the price paid or payable for the goods in issue pursuant to subparagraph 48(5)(a)(i). Subparagraph 48(5)(a)(i) provides, in part, that the price paid or payable in the sale of goods for export to Canada is to be adjusted by adding to it commissions and brokerage fees in respect of the goods incurred by the purchaser thereof, other than fees paid or payable by the purchaser to his agent for the service of representing the purchaser abroad in respect of the sale. The Tribunal also considered whether a certain finance or interest charge, which was included in the invoice price in consideration of a possible delay in payment of up to four months, was properly added to the price paid or payable for the goods in issue in calculating the value for duty.

The respondent determined that, while the appellant was the importer of the goods in issue, it was not "a valid purchaser in sales for export to Canada."

Rather, according to the respondent, the appellant was a selling agent acting for the vendor, Company X, a manufacturing firm in Finland, and the valid purchaser in the transactions at issue was another company, Company Y. Accordingly, the price paid or payable was the price paid by Company Y to the appellant.

To determine whether the appellant was a selling agent or the actual purchaser of the goods in issue, the Tribunal considered the true nature of the transaction between the parties. The Tribunal referred to its decision in *JewelWay International Canada, Inc. and JewelWay International, Inc. v. The Deputy Minister of National Revenue*, which reviewed the jurisprudence dealing with the issue of agency, and noted that various factors had been considered relevant for the purposes of determining whether there was an agency relationship, such as the extent to which one party controls another and the risk assumed by the alleged agent. The Tribunal noted that no one factor had been considered by the courts to be determinative of the issue of agency and that the courts had, in making their determinations, considered the facts as a whole and weighed the relative importance of the factors.

Similarly, the Tribunal examined the “trail” between Company X and the appellant, the appellant and Company Y, and Company Y and Company X in order to determine the exact nature of the relationships. The Tribunal acknowledged that there were some factors which could suggest that it was intended that the relationship between Company X and the appellant be that of seller and buyer. However, the Tribunal was of the view that, on balance, the facts showed that the appellant acted as the selling agent for Company X during the relevant period. In reaching its conclusion, the Tribunal relied, in particular, on the following factors: (1) the terms for the sale of the goods in issue were determined by Company X; (2) in most cases, the appellant secured customers and orders before importing the goods from Company X; (3) the goods were shipped directly to Company Y; (4) the appellant had no choice of suppliers; (5) under certain circumstances, in order to service warranties, goods had to be returned to the appellant, which would, in turn, return them to Company X; (6) in most circumstances, the appellant did not remit payment to Company X until it had received payment from Company Y; and, finally (7) the appellant did not, and could not, mark up the price charged to Company Y for the goods in issue after having been set by Company X.

In addition, the Tribunal relied on the definition of “selling agent” in Revenue Canada’s Memorandum D13-4-12 which provides, in part, that “[s]elling agents are persons who act for the account of a vendor; they seek customers and collect orders and, in some cases, may arrange for storage and delivery of the goods.” The Tribunal found that the appellant acted for the account of Company X, by

seeking customers and by securing orders. The Tribunal also noted that the evidence showed that Company X delivered the goods to Company Y in pursuance of orders placed through the appellant and that the price quoted on the invoice sent to the appellant included an amount for the appellant's services. Since the trade discount or selling commission had already been included in the price paid or payable for the goods, it should not have been deducted by the appellant when calculating the value for duty.

Accordingly, the Tribunal concluded that the selling commissions at issue properly formed part of the price paid or payable for the goods by the purchaser, Company Y, to or for the benefit of the vendor, Company X, in calculating the value for duty.

With respect to the finance charge, the Tribunal referred to Revenue Canada's Memorandum D13-3-13, which provides, in part, that charges for interest under a financing arrangement are not to be included in the value for duty of imported goods provided that: "(a) the charges are distinguished from the price actually paid or payable for the goods; (b) the financing arrangement was made in writing; and (c) when required by Customs the purchaser can demonstrate that: (1) the price paid or payable for identical or similar goods sold without a financing arrangement closely approximates the price paid or payable for the goods being appraised or imported, and/or (2) the claimed rate of interest does not exceed the prevailing rate of interest for such transactions." The Tribunal found that the conditions in Memorandum D-13-3-13, which, in the Tribunal's view, were reasonable, had not been met and concluded, therefore, that the finance charge at issue was properly included in the price paid or payable for the goods.

Design Work

***Capital Garment Co.
Inc. v. The Deputy
Minister of National
Revenue***

AP-96-002

*Decision:
Appeal allowed
(June 3, 1997)*

In this appeal, the Tribunal considered whether Revenue Canada, pursuant to clause 48(5)(a)(iii)(D), correctly included in the value for duty of imported apparel the value of certain imported graded paper patterns produced in Canada. Clause 48(5)(a)(iii)(D) provides, in part, that the price paid or payable in the sale of goods for export to Canada is to be adjusted by adding to it the value of design work undertaken elsewhere than in Canada and necessary for the production of the imported goods, that is supplied, directly or indirectly, by the purchaser of the goods, free of charge or at a reduced cost.

The Tribunal found that the graded paper patterns fell within the scope of subparagraph 48(5)(a)(iii), as they were supplied directly by the appellant free of charge to the manufacturer and, more importantly, they were "for use in connection with the production and sale for export of the imported goods."

However, since the work associated with the graded paper patterns was undertaken in Canada, they were not dutiable under paragraph 48(5)(a).

The Tribunal decided that grading was one step in the design process, albeit one that takes place towards the end of that process. The Tribunal accepted that the term “design” refers to “an outline, sketch, or plan, as of the form and structure of a work of art, an edifice, or a machine to be executed or constructed” and that a “plan” is “a formulated and esp. detailed method by which a thing is to be done; a design or scheme.” The Tribunal concluded that these definitions would encompass the grading element in the manufacture of garments. The Tribunal further concluded that the fact that grading may be done off-site and may be computerized did not take it outside the scope of that which is considered to be design work.

The Tribunal disagreed with counsel for the appellant that the graded paper patterns were not covered by subparagraph 48(5)(a)(iii) since they were not “for use in ... production.” The Tribunal indicated that subparagraph 48(5)(a)(iii) only requires that assists be used in connection with production and not necessarily in production.

The Tribunal was not persuaded that the graded paper patterns in issue were like “tools, dies, moulds and other goods” enumerated in clause 48(5)(a)(iii)(B) since they were not utilized directly in the production of the imported garments.

Royalties

***Nike Canada Ltd. v.
The Deputy Minister
of National Revenue****

*AP-95-197 to
AP-95-202 and
AP-95-206 to
AP-95-212*

*Decision:
Appeals allowed in part
(October 10, 1997)*

These were appeals dealing with the issue of whether certain payments were correctly included in the value for duty of certain imported NIKE products as royalties and licence fees pursuant to subparagraph 48(5)(a)(iv). Subparagraph 48(5)(a)(iv) provides, in part, that the price paid or payable in the sale of goods for export to Canada is to be adjusted by adding to it the value of royalties or licence fees paid, directly or indirectly, in respect of goods as a condition of the sale of those goods for export to Canada.

The appellant in these appeals, a wholly owned subsidiary of NIKE, Inc. of the United States, imports and sells athletic footwear, apparel and accessories under the trademark “NIKE.” It is licensed to distribute, sell and promote such products in Canada. NIKE International Ltd. is also a wholly owned subsidiary of NIKE, Inc. It processes all purchase orders for non-US distributors of NIKE products. NIKE (Ireland) Ltd. is a wholly owned subsidiary of NIKE International Ltd. It is the owner, among other things, of the rights to the NIKE name and trademark for Canada.

The appellant entered into a licence agreement with NIKE (Ireland) Ltd. to use the NIKE trademarks that it holds in connection with the manufacture, importation, promotion, distribution and sale of athletic footwear, clothing and accessories throughout Canada. In consideration of the right to use the trademarks, the appellant agreed to pay to NIKE (Ireland) Ltd., among others things, a royalty or licence fee equal to a fixed percentage of its net invoiced sales revenues. The other payment in question relates to agreements which provide for various methods of payment to various professional athletes, including “athlete royalty payments” for various services, such as endorsing NIKE products, which are also based on a fixed percentage of net invoiced sales revenues.

The Tribunal found that the payments to various athletes were not royalty or licence fees described in subparagraph 48(5)(a)(iv) and, therefore, that they should not have been added to the price paid or payable for the imported goods bearing the NIKE trademark in determining the value for duty. The Tribunal also found that those payments were not in respect of the goods, but rather were in respect of services provided by the athletes that were not sufficiently related to the importation of the goods to come within the meaning of subparagraph 48(5)(a)(iv).

Turning to the royalty payments, the Tribunal noted the appellant’s concession in its submissions in response to the Federal Court of Canada’s decision in *Reebok Canada, a division of Avreca International Inc. v. The Deputy Minister of National Revenue for Customs & Excise* that the royalty payments were “in respect of” the goods in issue. The Tribunal agreed with the parties that, in the circumstances of these appeals, these payments were royalty payments and were “in respect of” the goods in issue.

With respect to the issue of whether the payments were a condition of the sale for export to Canada, the Tribunal noted that the Federal Court of Canada in *Reebok* suggested that it is significant that the royalties in that appeal related to the exclusive use and sale of goods bearing trademarks of value and were payments relating to the valuable intellectual property rights associated with the purchase and sale of the goods in issue. The Tribunal also noted that the Federal Court of Canada stated that, in its view, the Tribunal’s decision in *Reebok* was consistent with evolving jurisprudence in regard to this issue. The Federal Court of Canada then made reference to the Tribunal’s decision in *Polygram Inc. v. The Deputy Minister of National Revenue for Customs and Excise* and the Federal Court of Appeal’s decision in *Signature Plaza Sport Inc. v. Her Majesty the Queen*. The Tribunal considered these decisions and decisions that it had made subsequent to *Polygram* and *Reebok*, such as *Jana & Company v. The Deputy Minister of National Revenue* and *Mattel Canada Inc. v. The Deputy Minister of National Revenue*. **

The Tribunal concluded that, in these appeals, and, in particular, as the Federal Court of Appeal emphasized in *Signature Plaza*, the issue of who is the vendor of the goods is critical to evaluating whether a royalty can be said to be a condition of sale for export. The Tribunal noted that, in these appeals, the parties agreed that the vendor was the Asian manufacturing companies and not NIKE, Inc. On this basis, the Tribunal distinguished these appeals from *Reebok* and *Signature Plaza*. Furthermore, the Tribunal was not persuaded, based on the evidence before it, that the manufacturers in these appeals would not sell to the appellant without the royalty having been paid to NIKE (Ireland) Ltd. The Tribunal found that there was no evidence of any requirement that the appellant establish this to the manufacturers' satisfaction before the sale for export is complete. However, the Tribunal acknowledged that it was unlikely that the sale would have occurred without a licence agreement being in place.

The Tribunal was of the view that other evidence relating to the issue of NIKE, Inc.'s "control" over the manufacturing process in these appeals indicated less "control" than that found in *Reebok* or *Signature Plaza*. The appellant had paid separately for development and design assistance. Furthermore, the appellant had used its independent ability to obtain product on its own to a significant degree. This is reflected in the fact that, during the audit period, the appellant sourced 20 percent of its goods directly from domestic sources.

However, the Tribunal noted that the Federal Court of Canada did not specifically focus on such distinctions. Rather, the Federal Court of Canada indicated that, as the royalties related to the exclusive use and sale of goods bearing trademarks of value and were payments relating to the valuable intellectual property rights associated with the purchase and sale of the goods in issue, they should be considered a condition of the sale for export to Canada and, thus, included in the value for duty. The Tribunal concluded that these two circumstances applied in the appeals. Therefore, in light of the decision of the Federal Court of Canada in *Reebok*, the Tribunal found that the royalty must be considered a condition of the sale for export and, therefore, included in the value for duty of the goods in issue.

Accordingly, the Tribunal allowed the appeals with respect to the payments to athletes and dismissed the appeals with respect to the royalty payments.

* The Tribunal's decision has been appealed to the Federal Court of Appeal (File No. A-905-97).

** The Tribunal's decision has been appealed and cross-appealed to the Federal Court of Appeal (File Nos. A-291-97 and A-292-97).

Method of Valuation

Sections 47 through 52 set out the various methods that may be used to determine the value for duty of imported goods. Subsection 47(1) provides that the “value for duty of goods shall be appraised on the basis of the transaction value of the goods in accordance with the conditions set out in section 48.” The transaction value is basically the price agreed upon between the parties to the transaction. Section 48 sets out various conditions relating to, among other things, the imposition of restrictions by the seller and the relationship between the buyer and seller.

Subsection 47(2) provides, in part, that where the value for duty of goods is not appraised on the basis of the transaction value, it shall be appraised on the basis of the following values, considered in the order set out below, that can be determined in respect of the goods and that can, under sections 49 to 52, be the basis on which the value for duty of the goods is appraised: (a) the transaction value of identical goods that meets the requirements set out in section 49; (b) the transaction value of similar goods that meets the requirements set out in section 50; (c) the deductive value of the goods; and (d) the computed value of the goods. Generally, the deductive value is calculated as the resale price of the goods or comparable imported goods in Canada less certain costs, such as commissions, profit, transportation costs and duties and taxes. Generally, the computed value is a cost-plus value calculated by adding costs and expenses for materials and production, an amount for profit and general expenses.

Nu Skin Canada, Inc. v. The Deputy Minister of National Revenue

*AP-96-129 to
AP-96-194*

*Decision:
Appeals allowed
(August 26, 1997)*

These were 66 appeals in which the Tribunal considered the appropriate method of appraisal for determining the value for duty of certain imported skin care and health care products during the period from October 1989 to March 1991. The respondent submitted that the value for duty should be determined using the computed value method, while the appellant submitted that it should be determined using the transaction value method.

The appellant imported goods under two scenarios:

(1) Approximately 90 percent of all importations during the period at issue were purchased from Company X. Purchase orders were placed on Company X by the appellant or by Nu Skin International, Inc. of Utah on behalf of the appellant. Goods were shipped directly by Company X from its US production facilities to Canada. Company X invoiced the appellant, which issued a cheque to Company X. The value for duty declared by the appellant at the time of importation was Company X's sale price to the appellant.

(2) Nu Skin International, Inc. placed separate purchase orders with various third-party producers. The goods were shipped to Nu Skin International, Inc., consolidated and then forwarded to the appellant. Nu Skin International, Inc.

billed the appellant for the goods. The value for duty declared by the appellant at the time of importation was the third-party producer's sale price to Nu Skin International, Inc.

Nu Skin International, Inc. had used a transfer pricing formula based on the "resale price method" for goods shipped to the appellant. In the appeals, counsel for the appellant submitted that the value for duty should be determined based on the price paid or payable to Company X and the third-party producers using the transaction value method.

The Tribunal noted that, pursuant to subsection 47(1), "[t]he value for duty of goods shall be appraised on the basis of the transaction value of the goods in accordance with the conditions set out in section 48." For the value for duty of goods to be determined using the transaction value method when related parties are involved, it may be demonstrated that "their relationship did not influence the price paid or payable for the goods." Counsel for the respondent argued that, during the period at issue, the appellant did not constitute a valid purchaser in a sale for export to Canada, as it did not manifest a sufficient degree of independence from Nu Skin International, Inc. As such, the value for duty of the goods in issue could not be determined based on the transfer price of those goods between Nu Skin International, Inc. and the appellant. This was not challenged by counsel for the appellant.

Rather, counsel for the appellant accepted, for purposes of these appeals, that Nu Skin International, Inc. and the appellant constituted as single business entity during the period at issue. As such, and consistent with the reasoning in *Harbour Sales (Windsor) Limited v. The Deputy Minister of National Revenue*, the sales by Company X and the third-party manufacturers to Nu Skin International, Inc. constituted sales for export for purposes of section 48. In contrast, counsel for the respondent submitted that these transactions were not sales, but rather contracts for services or, if they were sales, that they did not qualify as sales for export under section 48.

For purposes of these appeals, and in the absence of any evidence to the contrary, the Tribunal accepted that Nu Skin International, Inc. and the appellant constituted a single business entity during the period at issue.

The Tribunal referred to its decision in *Harbour Sales* in which it interpreted the phrase "sold for export to Canada" in section 48. In that case, the Tribunal had regard to two conditions in finding that goods were sold for export to Canada. First, a sale of goods was required and, second, those goods had to have been sold for export to Canada. The Tribunal was of the view that, if it found that the transactions involving Company X and the third-party manufacturers with

Nu Skin International, Inc. met these conditions, it need not go on to consider any subsequent transaction or other method of valuation in determining the value for duty of the imported goods.

As to the transactions involving Company X and the third-party manufacturers and Nu Skin International, Inc., the Tribunal found that they were sales of goods and not the mere provision of services to Nu Skin International, Inc. The Tribunal was of the view that Nu Skin International, Inc. did not exercise sufficiently close supervision over the production of the goods to conclude that Company X and the third-party manufacturers were merely providing services to Nu Skin International, Inc.

The Tribunal was also of the view that the goods sold to Nu Skin International, Inc. were for export to Canada. With regard to sales by Company X, goods destined for the Canadian market were distinguished from other Nu Skin products, in that they had metric sizing and bilingual labels that indicated the appellant's name and address. Goods for the Canadian market were acquired by a distinct purchase order and were shipped directly to the appellant's warehouse in Ontario from their place of manufacture.

With regard to sales by the third-party manufacturers, the goods were also acquired by a distinct purchase order and they had metric sizing and bilingual labels that indicated the appellant's name and address. However, the goods were not shipped directly to Canada, but rather to a warehouse, or portion thereof, set aside by Nu Skin International, Inc. for receiving goods destined for the Canadian market. The Tribunal was of the view that, under the circumstances, the stopover at Nu Skin International, Inc.'s warehouse was not fatal to a finding that the goods were sold for export to Canada within the meaning of section 48.

The Tribunal found that, during the period at issue, the value for duty of the goods in issue should have been based on the price paid to Company X and the third-party manufacturers using the transaction value method in section 48.

TABLE 1

Appeal Decisions Rendered Under Section 67 (Formerly Section 47) of the *Customs Act*, Section 81.27 (Formerly Section 51.27) of the *Excise Tax Act* and Section 61 of *SIMA* Between April 1, 1997, and March 31, 1998

Appeal No.	Appellant	Date of Decision	Decision
<i>Customs Act</i>			
AP-96-080	Nicholson Equipment Ltd.	April 25, 1997	Allowed
AP-95-261 and AP-95-263	Charley Originals Ltd., Division of Algo Group Inc. and Mr. Jump Inc., Division of Algo Group Inc.	April 29, 1997	Allowed in Part
AP-96-078	Fastco Canada	April 29, 1997	Dismissed
AP-95-065	Steen Hansen Motorcycles Ltd.	May 12, 1997	Dismissed
AP-96-059	Canadian Meter, A Division of Singer Company of Canada Limited	May 30, 1997	Dismissed
AP-96-031	Eurotrade Import-Export Inc.	June 2, 1997	Dismissed
AP-96-002	Capital Garment Co. Inc.	June 3, 1997	Allowed
AP-96-044	Hung Gay Enterprises Ltd.	June 5, 1997	Dismissed
AP-96-041	Interprovincial Corrosion Control Company Limited	June 9, 1997	Allowed
AP-95-271	Clyde R. Byers	June 16, 1997	Dismissed
AP-95-190	R.T. Vanderbilt Company, Inc.	June 25, 1997	Allowed
AP-95-214, AP-95-215 and AP-95-237	Cross Canada Auto Body Supply (Windsor) Ltd. and AT PAC West Auto Parts Ltd.	July 3, 1997	Dismissed
AP-96-016	Trudell Medical Marketing Limited	July 24, 1997	Dismissed
AP-96-042	Future Shop Ltd.	August 12, 1997	Dismissed
AP-96-105	Armstrong Bros. Tool Co.	August 15, 1997	Allowed in part
AP-96-043	Weil Company Limited	August 19, 1997	Allowed
AP-96-129 to AP-96-194	Nu Skin Canada, Inc.	August 26, 1997	Allowed
AP-96-076	DMG Trading Co. Ltd.	August 28, 1997	Dismissed
AP-96-007	Tropsport Acquisitions Inc.	August 29, 1997	Dismissed
AP-95-276 and AP-95-307	Boss Lubricants	September 3, 1997	Dismissed
AP-95-296	Moda Imports, Inc.	September 3, 1997	Allowed
AP-96-063, AP-96-085 and AP-96-089	Simmons Canada Inc. and Les Entreprises Sommex Ltée	September 15, 1997	Dismissed
AP-96-114	Tootsie Roll of Canada Ltd.	September 16, 1997	Allowed
AP-96-225	Record Tools Inc.	September 16, 1997	Allowed
AP-96-121	Newman's Valve Limited	October 10, 1997	Dismissed
AP-95-197 to AP-95-202 and AP-95-206 to AP-95-212	Nike Canada Ltd.	October 10, 1997	Allowed in part

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-96-092	Nortesco Inc.	October 16, 1997	Allowed
AP-96-213	London S.W. Ontario Martial Arts Supply Inc.	October 20, 1997	Dismissed
AP-95-127 and AP-95-191	Erv Parent Co. Ltd.	November 12, 1997	Dismissed
AP-96-196 to AP-96-198	Viessmann Manufacturing Company Inc.	November 14, 1997	Dismissed
AP-96-127	KanEng Industries Inc.	December 2, 1997	Allowed
AP-96-082	Rollins Machinery Ltd.	December 2, 1997	Allowed in part
AP-96-117	Yves Ponroy Canada	December 5, 1997	Allowed
AP-95-224	Philips Electronics Ltd.	December 18, 1997	Dismissed
AP-96-122	Papanan Enterprises Ltd.	December 18, 1997	Dismissed
AP-94-212 and AP-94-213	Chaps Ralph Lauren, A Division of 131384 Canada Inc. and Modes Alto-Regal, Inc.	December 22, 1997	Allowed in part
AP-96-205	Formica Canada Inc.	January 20, 1998	Allowed
AP-96-208 and AP-97-009	Philips Electronics Ltd.	February 5, 1998	Dismissed
AP-96-241 and AP-96-242	C.A.S. Sports International Inc. and Atomic Ski Canada Inc.	February 13, 1998	Dismissed
AP-97-036	Spalding Canada Inc.	February 19, 1998	Dismissed

Excise Tax Act

AP-93-093	Kobetek Systems Limited	May 12, 1997	Dismissed
AP-95-279	Hardy Bay Machine Works	June 24, 1997	Dismissed
AP-96-029	Newport Motor Manufacturing Company Limited	June 25, 1997	Dismissed
AP-94-348	School District No. 10 (Arrow Lakes)	July 3, 1997	Allowed
AP-92-085	J.B. Furniture Manufacturing Ltd.	August 11, 1997	Dismissed
AP-96-119	Ferland Soudure Enr.	August 11, 1997	Dismissed
AP-92-031	Les Produits Securo Inc.	August 15, 1997	Allowed in part
AP-96-056	Informco Inc.	August 15, 1997	Dismissed
AP-91-170	Jim Derewianka	August 20, 1997	Dismissed
AP-95-132	W.K. Investments Ltd.	August 29, 1997	Dismissed
AP-96-012	Jorwalt Building Designers Ltd.	September 4, 1997	Allowed
AP-96-201	Raytheon Canada Limited	September 16, 1997	Allowed
AP-94-006	Humpty Dumpty Foods Limited	September 19, 1997	Dismissed
AP-94-083	Permanent Lafarge (A Division of Lafarge Canada Inc.)	September 19, 1997	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-96-071	Sani Métal Ltée	September 30, 1997	Allowed in part
AP-96-084	Vitrierie Vertech Inc.	September 30, 1997	Dismissed
AP-95-228 and AP-95-229	Lorna's Flowers Ltd. and Marquis Flower Shop Ltd.	October 28, 1997	Allowed
AP-92-089	Mathew & Co., Limited	November 6, 1997	Dismissed
AP-93-372	Eldorado Petroleums Ltd.	November 19, 1997	Allowed
AP-93-373	Gas King Oil Co. Ltd.	November 19, 1997	Allowed
AP-89-290 and AP-92-352	Peter Ostafie	December 15, 1997	Dismissed
AP-92-342	Smith's Marine Instruments Ltd.	December 16, 1997	Dismissed
AP-96-226	Fleck Manufacturing Inc.	December 18, 1997	Dismissed
AP-94-023, AP-94-024 and AP-94-025	Arctic College and Government of the Northwest Territories	December 19, 1997	Dismissed
AP-94-187	Timothy H. Magnus	January 20, 1998	Allowed
AP-96-066	Jarnail Singh Purewall	January 20, 1998	Dismissed
AP-94-282	Greyhound Lines of Canada Ltd.	February 2, 1998	Dismissed
<i>Special Import Measures Act</i>			
AP-96-199	Fletcher Leisure Group Inc.	September 26, 1997	Allowed
AP-96-211, AP-96-212, AP-96-216, AP-96-223, AP-96-237 to AP-96-239, AP-97-001, AP-97-004 to AP-97-008 and AP-97-024 to AP-97-026	2703319 Canada Inc. o/a VVV Enterprises, 168700 Canada Inc. o/a Sacha London, Aldo Shoes (1993) Inc., Transit (A Division of Aldo Shoes) and Globo (A Division of Aldo Shoes)	February 6, 1998	Dismissed

TABLE 2

Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 1997, and March 31, 1998, and Pending as of March 31, 1998¹

Appeal No.	Appellant	Federal Court No.
AP-94-006	Humpty Dumpty Foods Limited	T—77—98
AP-94-083	Permanent Lafarge (A Division of Lafarge Canada Inc.)	T—78—98
AP-94-148	Suncor Inc.	T—699—97
AP-94-212	Chaps Ralph Lauren, A Division of 131384 Canada Inc.	A—53—98
AP-94-213	Modes Alto-Regal, Inc.	A—76—98
AP-94-327	Double N Earth Movers Ltd.	T—698—97
AP-95-126	Mattel Canada Inc.	A—292—97
AP-95-197, AP-95-198, AP-95-200 to AP-95-202, AP-95-206 to AP-95-212	Nike Canada Ltd.	A—905—97
AP-95-230	Euro-Line Appliances	A—323—97
AP-95-255	Mattel Canada Inc.	A—291—97
AP-95-261 and AP-95-263	Charley Originals Ltd., Division of Algo Group Inc. and Mr. Jump Inc., Division of Algo Group Inc.	A—528—97
AP-96-016	Trudell Medical Marketing Limited	A—695—97
AP-96-048	Canadian Optical Supply Company Ltd.	A—368—97
AP-96-054	Sunbeam Corporation (Canada) Limited	A—342—97
AP-96-082	Rollins Machinery Ltd.	A—3—98
AP-96-105	Armstrong Bros. Tool Co.	A—818—97
AP-96-114	Tootsie Roll of Canada Ltd.	A—848—97
AP-96-117	Yves Ponroy Canada	A—97—98
AP-96-127	KanEng Industries Inc.	A—44—98
AP-96-205	Formica Canada Inc.	A—98—98
AP-96-211, AP-96-212, AP-96-216, AP-96-223, AP-96-237 to AP-96-239, AP-97-001, AP-97-004 to AP-97-008 and AP-97-024 to AP-97-026	2703319 Canada Inc. o/a VVV Enterprises, 168700 Canada Inc. o/a Sacha London, Aldo Shoes (1993) Inc., Transit (A Division of Aldo Shoes) and Globo (A Division of Aldo Shoes)	A—155—98
AP-96-241 and AP-96-242	C.A.S. Sports International Inc. and Atomic Ski Canada Inc.	A—108—98
AP-97-036	Spalding Canada Inc.	A—123—98

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all Tribunal decisions appealed to the Federal Court of Canada between April 1, 1997, and March 31, 1998.

TABLE 3**Decisions of the Federal Court of Canada Rendered Between April 1, 1997, and March 31, 1998¹**

Appeal No.	Appellant	Federal Court No.	Outcome	Date
3078	Alrich Custom Cabinets Ltd.	T—16—93	Appeal discontinued	March 30, 1998
AP-89-027	Hussmann Store Equipment Limited	T—2382—90	Appeal dismissed	June 26, 1997
AP-89-234	Douglas Anderson and Creed Evans	T—2487—93	Appeal remanded	May 27, 1997
AP-89-267	Perma Tubes Ltd.	T—2586—91	Appeal discontinued	October 30, 1997
AP-90-037	Tom Baird & Associates Ltd.	A—866—96	Appeal dismissed	November 18, 1997
AP-90-138	Pigmalion Services	A—252—97	Appeal dismissed	October 20, 1997
AP-92-224	Reebok Canada Inc., A Division of Avreca International Inc.	T—864—94	Appeal dismissed	June 30, 1997
AP-92-255	Krispy Kernels (Canada) Inc.	T—1040—94	Appeal dismissed	October 23, 1997
AP-93-140 and AP-93-142	J P L International Diffusion Inc.	T—3038—94	Appeal allowed	February 26, 1998
AP-93-237	Dannycos Trading (Canada) Ltd.	T—2084—94	Appeal allowed	April 28, 1997
AP-93-274 and AP-93-294	Continuous Colour Coat Limited	T—2831—94	Appeal dismissed	October 27, 1997
AP-93-320	Technessen Ltd.	T—765—95	Appeal dismissed	December 2, 1997
AP-94-005	Schrader Automotive Inc.	T—799—95	Appeal allowed	September 26, 1997
AP-95-109	Bennett Fleet Inc.	A—3—97	Appeal dismissed	March 18, 1998
AP-96-041	Interprovincial Corrosion Control Company Limited	A—592—97	Appeal discontinued	February 20, 1998

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all appeals that were decided between April 1, 1997, and March 31, 1998.

CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

Introduction

The CITT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the government or the Minister of Finance.

Dairy Blends

The Tribunal initiated an inquiry into the importation of dairy product blends outside the coverage of Canada's tariff-rate quotas. A panel of the Tribunal, composed of Arthur B. Trudeau (presiding), Pierre Gosselin and Patricia M. Close, conducted the inquiry and will submit its report by July 1, 1998.

The inquiry was referred to the Tribunal on December 17, 1997, by the Governor in Council on the recommendation of the Minister of Finance, the Minister of Agriculture and Agri-Food and the Minister for International Trade.

Pursuant to section 18 of the CITT Act, the Tribunal was directed:

- (a) to inquire into the matter of the importation of dairy product blends outside the coverage of Canada's tariff-rate quotas by:
 - (i) examining the factors influencing the domestic market for such imports and the implications of these imports for the Canadian dairy producing and processing industry and other segments of the Canadian food processing industry, including production and revenue levels;
 - (ii) reviewing the legal, technical, regulatory and commercial considerations relevant to the treatment of imports of these products, as well as Canada's international trade rights and obligations under NAFTA and the WTO Agreement;
 - (iii) identifying options for addressing any problems raised by this issue in a manner consistent with Canada's domestic and international rights and obligations; and
- (b) to hold public hearings with respect to the inquiry.

Tariff-Related Inquiries

A pre-hearing conference was held in Ottawa on January 30, 1998. The pre-hearing conference allowed parties an opportunity to make preliminary submissions concerning the issues to be addressed in the course of the inquiry, the scope of the inquiry, the methodology to be used and the possible options.

Prior to the public hearing in April, the Tribunal conducted an extensive program of economic and legal research. As part of this program, questionnaires were sent to the Dairy Farmers of Canada, dairy processors, importers and foreign governments. More than 90 questionnaires were received and compiled in a data tabulation report.

Other reports prepared by staff included an industry profile and reports on import regimes, on possible industry reactions to imports of dairy product blends and on the international and domestic legal framework. In addition to staff work, a report was prepared for the Tribunal by Treloar Product Development International Inc. and International Food Focus Ltd. on the potential market for dairy product blends outside the coverage of Canada's tariff-rate quotas. Staff of the Economic and Policy Analysis Directorate of the Department of Agriculture and Agri-Food prepared a report for the Tribunal on the impact of imports of butteroil/sugar blends on the Canadian dairy industry. The public hearing for this inquiry were held in Ottawa from April 6 to 9 and from April 14 to 16, 1998.

Under section 19 of the CITT Act, the Minister of Finance may refer to the Tribunal for inquiry and report "any tariff-related matter, including any matter concerning the international rights or obligations of Canada in connection therewith."

Textile Reference

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as amended on March 20 and July 24, 1996, and on November 26, 1997, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister of Finance.

Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, for production. The textile inputs for which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of the schedule to the *Customs Tariff*. Since July 24, 1996, and at least until July 1, 1999, the following yarns are not included in the textile reference:

	<p>Knitting yarns, solely of cotton or solely of cotton and polyester staple fibres, measuring more than 190 decitex, of Chapter 52 or subheading No. 5509.53 other than those used to make sweaters, having a horizontal self-starting finished edge and the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimetres (12 or fewer stitches per inch) measured in the horizontal direction.</p>
Types of Relief Available	<p>The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, textile- and/or end-use-specific tariff provisions. In the case of requests for tariff relief on textile inputs used in the manufacture of women's swimsuits, co-ordinated beachwear and co-ordinated accessories only, the recommendation could include company-specific relief. The recommendation could be for tariff relief for either a specific or an indeterminate period of time. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.</p>
Notification of a Request	<p>Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice announcing the request. The minimum period of time for the notification of a request before an investigation is commenced is 30 days.</p> <p>This notification is designed to increase transparency, identify potential deficiencies in the request, avoid unnecessary investigations, provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply, inform other users of identical or substitutable textile inputs, prepare the domestic industry to respond to subsequent investigation questionnaires and give associations advance time for planning and consultation with their members.</p>
Investigations	<p>When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as Revenue Canada, the Department of Foreign Affairs and International Trade, the Department of Industry and the Department of Finance. The notice is also published in the <i>Canada Gazette</i>.</p> <p>In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's</p>

**Recommendations
to the Minister**

recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.

To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits or questionnaires. Information is obtained from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of determining whether the tariff relief sought will maximize net economic gains for Canada.

In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.

The procedures developed for the conduct of the Tribunal's investigations envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

Where confidential information is provided to the Tribunal, such information falls within the protection of the CIIT Act. Accordingly, the Tribunal will only distribute confidential information to counsel who are acting on behalf of a party and who have filed a declaration and undertaking.

Review Process

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within any earlier specified time frame which the Tribunal determines to be appropriate. The Tribunal will recommend the reduction or removal of customs duties on a textile input where it will maximize net economic gains for Canada.

Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending

the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify such a request.

Where the Minister of Finance has made an order for tariff relief subject to a scheduled expiry date, the Tribunal will, before the expiry date, issue a formal notice that the tariff relief provided by the order will expire unless the Tribunal issues a recommendation that tariff relief should be continued and the Minister of Finance implements the recommendation. The notice invites interested parties to file submissions for or against continuation of tariff relief.

If no opposition to the continuation of tariff relief is received, upon receipt of submissions and information supporting the request for continuation of tariff relief, the Tribunal may decide to recommend the continuation of tariff relief. Conversely, if no request for continuation of tariff relief is submitted, the Tribunal may decide to recommend the termination of tariff relief. If it appears that a more complete review is warranted, the Tribunal will look at whether all relevant factors which led it to recommend tariff relief continue to apply and whether extending tariff relief under such conditions would continue to provide net economic benefits for Canada.

Annual Status Report

In accordance with the terms of reference received by the Tribunal directing it to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations, the Tribunal provided the Minister of Finance, on January 7, 1998, with its third annual status report on the investigation process. The status report covered the period from October 1, 1996, to September 30, 1997.

**Recommendations
Submitted
During 1997-98**

During fiscal year 1997-98, the Tribunal issued 5 reports to the Minister of Finance which related to 11 requests for tariff relief. In addition, the Tribunal issued 1 report further to a review of recommendations that were issued on September 19, 1995. At year end, 19 requests were outstanding, of which investigations had been commenced in respect of 8 requests. Table 1 at the end of this chapter summarizes these activities.

**Recommendations in
Place**

By the end of fiscal year 1997-98, the Government had implemented 43 recommendations by the Tribunal, of which 41 are still subject to tariff relief orders. As of January 1, 1998, the codes implementing the Tribunal's recommendations have all been replaced by tariff items, with the exception of the codes implementing the recommendations for Request No. TR-95-054 (Handler

Textile (Canada) Inc.) and Request No. TR-95-063 (Buckeye Industries) which, because they limited relief under the United States Tariff only, became obsolete when that tariff became free on that date. Table 4 provides a summary of recommendations implemented to date.

A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.

Peerless Clothing Inc.

TR-96-005

*Recommendation:
Tariff relief granted
(February 20, 1998)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of woven fabrics of combed or carded yarns, wholly of virgin wool and fine animal hair, containing not less than 10 percent by weight of fine animal hair, as certified by the exporter, of a weight exceeding 140 g/m² but not exceeding 300 g/m², for use in the production of men's suits, jackets, blazers and trousers, not be granted. In its report, the Tribunal indicated that the domestic textile industry currently produces similar or substitutable fabrics or has the technical capabilities to produce identical or substitutable fabrics. The Tribunal was of the view that the costs which would be incurred by the domestic textile industry, if tariff relief were granted, would outweigh the benefits to the producers of men's suits, jackets, blazers and trousers. The complete removal of the tariff, in this particular case, would hamper Canadian textile producers' opportunity to participate in this emerging market.

Les Collections Shan Inc.

TR-96-008
to TR-96-013

*Recommendation:
Five-year tariff relief
and no tariff relief for
labels
(July 22, 1997)*

The Tribunal recommended to the Minister of Finance that the customs duty on importations, limited to specific yearly volumes, of certain woven fabrics of cotton, woven fabrics of man-made filaments and man-made staple fibres, nonwovens, padding, knitted fabrics, tulles and narrow woven fabrics, for use in the manufacture of women's swimsuits, "co-ordinated beachwear" and "co-ordinated accessories" be removed for a period of five years, solely for Les Collections Shan Inc. (Shan), excluding fabrics of a uniform solid colour of black or white. The Tribunal further specified that the subject fabrics that are for use in the manufacture of "co-ordinated beachwear" and "co-ordinated accessories" are fabrics made by the same supplier that produces the subject fabric for use in the manufacture of a woman's swimsuit with which these fabrics are meant to co-ordinate. These subject "co-ordinated" fabrics are also of similar or complimentary patterns and colours as the subject swimsuit fabric.

In its report, the Tribunal noted that Shan occupies a unique position within the Canadian women's swimwear industry and that it is using high-quality fabrics from Europe to produce trendsetting swimsuits for a clientele that wants a sophisticated product created by a designer that has established its reputation in fashion circles. The Tribunal also noted that Shan's uniqueness extends to its

“co-ordinated beachwear” and “co-ordinated accessories,” which include cover-ups, wraps, handbags and other accessories manufactured largely with similar prints to those used to produce the swimsuits with which they are intended to be sold. It also appeared to the Tribunal that there are no Canadian producers that can supply fabrics for both swimsuits and “co-ordinated beachwear,” a condition that is of great importance if a supplier wishes to sell to Shan. Furthermore, in the Tribunal’s view, granting tariff relief would improve Shan’s financial position and advance its relative competitive position vis-à-vis its competitors. The Tribunal estimated that the granting of such tariff relief would result in a net economic benefit of approximately \$100,000 per annum.

The Tribunal recommended that tariff relief not be granted for labels, narrow woven, of a width of 3 cm or less, solely of single multifilament yarns of polyester, with normal selvages, inscriptions or motifs produced by weaving, because it believed that Canadian producers of labels are in a position to meet Shan’s needs regarding woven labels.

**Jones Apparel Group
Canada Inc.**

TR-97-001

*Recommendation:
Indeterminate tariff
relief
(December 19, 1997)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of woven fabrics, containing 35 percent or more by weight of cellulose acetate or cellulose triacetate filaments mixed with polyester filaments or with viscose rayon filaments, containing not more than 5 percent by weight of any other fibre, with an average yarn twist of 500 turns per metre in the warp and/or the weft, of a weight of 100 g/m² or more but not exceeding 310 g/m², for use in the manufacture of women’s jackets, blazers, dresses, skirts, trousers or waistcoats, be granted for an indeterminate period of time. The Tribunal noted that there did not appear to be any domestic production of fabrics identical to or substitutable for the subject fabrics and, consequently, that there would not be any direct commercial costs associated with the removal of the customs duty on importations of the subject fabrics. The Tribunal estimated that the granting of such tariff relief would result in a net commercial benefit of approximately \$200,000 per annum.

TABLE 1**Disposition of Requests for Tariff Relief Between April 1, 1997, and March 31, 1998**

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-013	Doubletex	fabric	In Progress	
TR-96-005	Peerless Clothing Inc.	fabric	February 20, 1998	Tariff relief not granted
TR-96-007	H.D. Brown Entreprises Limited	fabric	July 17, 1997	Tariff relief not granted
TR-96-008 to TR-96-013	Les Collections Shan Inc.	fabric and nonwoven	July 22, 1997	Five-year tariff relief. No tariff relief in Request No. TR-96-009 (labels)
TR-96-014	Peerless Clothing Inc.	fabric	In Progress	
TR-97-001	Jones Apparel Group Canada Inc.	fabric	December 19, 1997	Indeterminate tariff relief
TR-97-002 and TR-97-003	Universal Manufacturing Inc.	fabric	February 27, 1998	Indeterminate tariff relief
TR-97-004, TR-97-007, TR-97-008 and TR-97-010	Blue Bird Dress of Toronto Ltd.	fabric	In Progress	
TR-97-005	Phantom Industries Inc.	yarn	In Progress	
TR-97-006	Peerless Clothing Inc.	fabric and nonwoven	In Progress	
TR-97-009	Not used			
TR-97-011	Australian Outback Collection (Canada) Ltd.	fabric	Not yet initiated	
TR-97-012	Ballin Inc.	fabric	Not yet initiated	
TR-97-013	Blue Bird Dress of Toronto Ltd.	fabric	Not yet initiated	
TR-97-014	Lenrod Industries Ltd.	nonwoven	Not yet initiated	
TR-97-015 to TR-97-020	Helly Hansen Canada Limited	fabric	Not yet initiated	
TR-97-021	Wire Rope Industries Limited	sisal core	Not yet initiated	

TABLE 2**Notices of Expiry of Tariff Relief Recommendations Between April 1, 1997, and March 31, 1998**

Expiry No.	Original Request No.	Textile Input	Status/Recommendations
TE-97-001	TR-94-011 and TR-94-019	Woven fabrics known as "Armani Gabardine"	Review initiated (TA-97-001)
TE-97-002	TR-94-005	100 percent polyester herringbone woven fabric	In Progress
TE-97-003	TR-94-009	VINEX FR-9B fabric	In Progress
TE-97-004	TR-95-009	Certain dyed woven fabrics of rayon and polyester	In Progress

TABLE 3**Disposition of Reviews of Tariff Relief Recommendations Between April 1, 1997, and March 31, 1998**

Review No.	Expiry No. (Original Request No.)	Textile Input	Date of Disposition	Status/Recommendations
TA-97-001	TE-97-001 (TR-94-011 and TR-94-019)	Woven fabrics known as "Armani Gabardine"	February 26, 1998	No extension of tariff relief

TABLE 4

Tariff Relief Recommendations in Place

Request No.	Requester	Tariff Item(s)	Duration
TR-94-001	Canatex Industries (Division of Richelieu Knitting Inc.)	5402.41.12	Permanent tariff relief
TR-94-002 and TR-94-002A	Kute-Knit Mfg. Inc.	5205.14.20 5205.15.20 5205.24.20 5205.26.20 5205.27.20 5205.28.20 5205.35.20 5205.46.20 5205.47.20 5205.48.20 5206.14.10 5206.15.10 5206.24.10 5206.25.10 5509.53.10	Three-year tariff relief
TR-94-004	Woods Canada Limited	5208.52.10	Permanent tariff relief
TR-94-005	Hemisphere Productions Inc.	5407.61.91	Three-year tariff relief
TR-94-009	Équipement Saguenay (1982) Ltée	5512.99.10	Three-year tariff relief
TR-94-010	Palliser Furniture Ltd.	5806.20.10	Permanent tariff relief
TR-94-011 and TR-94-019	Château Stores of Canada Ltd. and Hemisphere Productions Inc.	5515.11.20	Two-year tariff relief
TR-94-012	Peerless Clothing Inc.	5309.29.20	Indeterminate tariff relief
TR-94-013 and TR-94-016	MWVG Apparel Corp.	5208.42.20 5208.43.20 5208.49.20 5513.31.10 5513.32.10 5513.33.10	Permanent tariff relief
TR-94-017 and TR-94-018	Elite Counter & Supplies	9943.00.00	Permanent tariff relief
TR-95-003	Landes Canada Inc.	5603.11.20 5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20	Permanent tariff relief
TR-95-004	Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 5208.52.20	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No.	Requester	Tariff Item(s)	Duration
TR-95-005	Lingerie Bright Sleepwear (1991) Inc.	5513.11.10 5513.41.10	Indeterminate tariff relief
TR-95-009	Peerless Clothing Inc.	5408.21.10 5408.21.20 5408.22.21 5408.22.30 5408.31.20 5408.32.30	Indeterminate tariff relief Two-year tariff relief
TR-95-010 and TR-95-034	Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20	Indeterminate tariff relief
TR-95-011	Louben Sportswear Inc.	5408.31.10 5408.32.20	Indeterminate tariff relief
TR-95-012	Perfect Dyeing Canada Inc.	5509.32.10	Indeterminate tariff relief
TR-95-014	Palliser Furniture Ltd.	5801.35.10	Two-year tariff relief
TR-95-036	Canadian Mill Supply Co. Ltd.	5208.21.20	Indeterminate tariff relief
TR-95-037	Paris Star Knitting Mills Inc.	5408.24.11 5408.24.91 5408.34.10 5516.14.10 5516.24.10	Indeterminate tariff relief
TR-95-051	Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22	Indeterminate tariff relief
TR-95-053 and TR-95-059	Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.10 5802.19.10 5802.19.20	Indeterminate tariff relief
TR-95-056	Sealy Canada Ltd.	3921.19.10 5407.69.10 5407.73.10 5407.94.10 5516.23.10 5903.90.21 6002.43.20	Indeterminate tariff relief
TR-95-057 and TR-95-058	Doubletex	5407.51.10 5407.61.92 5407.69.10 5515.11.10 5516.21.10 5516.91.10	Indeterminate tariff relief
TR-95-060	Triple M Fiberglass Mfg. Ltd.	7019.59.10	Indeterminate tariff relief
TR-95-061	Camp Mate Limited	6002.43.30	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No.	Requester	Tariff Item(s)	Duration
TR-95-064 and TR-95-065	Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6002.43.10	Indeterminate tariff relief
TR-96-003	Venture III Industries Inc.	5407.61.92	Indeterminate tariff relief
TR-96-004	Acton International Inc.	5906.99.21	Indeterminate tariff relief
TR-96-008, TR-96-010 to TR-96-013	Les Collections Shan Inc.	O.I.C. P.C. 1997-1668	Five-year tariff relief

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Suppliers may challenge procurements that they believe have not been carried out in accordance with the requirements of the following: Chapter Ten of NAFTA, Chapter Five of the AIT or the AGP. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, and January 1, 1996, respectively.

Any potential suppliers who believe that they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts on a designated procurement, may lodge a formal complaint with the Tribunal. A potential supplier with an objection is encouraged to resolve the issue first with the government institution responsible for the procurement. When this process is not successful or a supplier wants to deal directly with the Tribunal, the complainant may ask the Tribunal to consider the case by filing a complaint within the prescribed time limit.

When the Tribunal receives a complaint, it reviews the submission against the criteria for filing. If there are deficiencies, the complainant is given an opportunity to correct these within a specified time limit. Once the complaint meets the criteria for filing, the government institution and all other interested parties are sent a formal notification of the complaint. A copy of the complaint is sent to the government institution. When the Tribunal decides to conduct an inquiry, an official notice of the complaint is published in *Government Business Opportunities* and the *Canada Gazette*. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal, unless the government institution certifies that the procurement is urgent or that the delay would be against the public interest.

After receipt of its copy of the complaint, the government institution responsible for the procurement files a report responding to the allegations. The complainant is then sent a copy of the Government Institution Report and has seven days to submit comments. These are forwarded to the government institution and any interveners.

A staff investigation, which can include interviewing individuals and examining files and documents, may be conducted and result in the production of

a Staff Investigation Report. This report is circulated to the parties for their comment. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

The Tribunal then makes a determination, which may consist of recommendations to the government institution (such as re-tendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing complainant for filing and proceeding with the bid challenge and/or costs for preparing the bid. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal in its determination are to be implemented to the greatest extent possible.

Summary of Procurement Review Activities

	1996-97	1997-98
CASES RESOLVED BY OR BETWEEN PARTIES		
Resolved Between Parties	0	1
Withdrawn	6	9
Abandoned While Filing	<u>1</u>	<u>2</u>
Subtotal	7	12
INQUIRIES NOT INITIATED OR CONTINUED ON PROCEDURAL GROUNDS		
Lack of Jurisdiction	7	8
Late Filing	5	4
No Valid Basis	<u>9</u>	<u>12</u>
Subtotal	21	24
CASES DETERMINED ON MERIT		
Complaint not Valid	7	9
Complaint Valid	<u>5</u>	<u>7</u>
Subtotal	12	16
IN PROGRESS	<u>9</u>	<u>11</u>
TOTAL	49	63

Summary of Selected Decisions

During fiscal year 1997-98, the Tribunal issued 16 written determinations of its findings and recommendations. In 7 of the 16 written decisions, the complaints were determined to be valid or valid in part. In these cases, various remedies were granted in the form of cost awards or recommendations. Eleven other cases were in progress at year end. Table 1 at the end of this chapter summarizes these activities, as well as those cases resolved by or between parties.

Of the cases heard by the Tribunal in carrying out its procurement review functions, certain decisions stand out from among the others because of the legal significance of the cases. A brief résumé of a representative sample of such cases follows. These summaries have been prepared for general information purposes only and have no legal status.

Sybase Canada Ltd.

PR-96-037

*Determination:
Complaint valid
(July 30, 1997)*

The Tribunal made a determination with respect to a complaint filed by Sybase Canada Ltd. (the complainant) concerning a solicitation of the Department of Public Works and Government Services (the Department). The solicitation was a limited tender for the purchase of a departmental licence for a Relational Database Management System for up to 55,000 users, plus maintenance over a five-year period from Oracle Corporation Canada Inc. for the Department of National Defence.

The complainant alleged that the Department had not carried out this procurement in accordance with the provisions of Article 1016(1) of NAFTA.

Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined that the complaint was valid; therefore, it recommended, as a remedy, that the Department issue a competitive solicitation for the requirement in accordance with the provisions of NAFTA, the AGP and the AIT.

Northern Micro Inc.

PR-97-006

*Determination:
Complaint valid
(July 29, 1997)*

The Tribunal made a determination with respect to a complaint filed by Northern Micro Inc. (the complainant) concerning a solicitation of the Department for the supply of computer workstations by means of National Individual Standing Offers (NISOs) for Human Resources Development Canada.

The complainant alleged that the procurement process was flawed because the Department's determination that a single business entity could represent more than one bidder was insupportable in the circumstances.

After careful consideration of the requirements of NAFTA and the AIT, the Tribunal determined that the complaint was valid. The Tribunal recommended, as

a remedy, that the Department consider the complainant's compliant offer as that of the third bidder and proceed in accordance with the provisions of the applicable agreements and of the Request for a Standing Offer. The Department agreed to implement the Tribunal's recommendation and proceeded to grant a NISO to the complainant.

TRAC Industries Ltd.

PR-97-023

*Determination:
Complaint dismissed/
Lack of jurisdiction
(November 27, 1997)*

The Tribunal made a determination with respect to a complaint filed by Trac Industries Ltd. (the complainant) concerning a solicitation of the Department for depot level inspection and repair services for armoured vehicles general purpose, Department of National Defence.

The complainant alleged that the Department improperly applied certain evaluation criteria in the tender documents relating to the labour force qualification to perform certain welding operations and, thereby, erroneously declared the complainant's proposal non-responsive.

The Department filed with the Tribunal a notice of motion to obtain, amongst other things, an order dismissing the complaint on the basis that the Tribunal was without jurisdiction in this matter, since the procurement was excluded for regional and economic development purposes from the applicable provisions of NAFTA, the AGP and the AIT.

Having examined the evidence and arguments presented by the parties and considered the obligations specified in NAFTA, the AGP and the AIT, the Tribunal determined that the complaint was not within the Tribunal's jurisdiction, and the complaint was, therefore, dismissed.

**Wang Canada
Limited**

PR-97-034

*Determination:
Complaint valid
(March 11, 1998)*

The Tribunal made a determination with respect to a complaint filed by Wang Canada Limited (the complainant) concerning a solicitation of the Department. The solicitation was for computer maintenance services on a national basis for the Department of National Revenue.

The complainant alleged that the Department failed to evaluate its bid in accordance with the evaluation criteria set out in the Request for Proposal.

Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined that the procurement was not conducted according to NAFTA and the AIT and that, therefore, the complaint was valid.

The Tribunal recommended, as a remedy, that, subject to the provisions of Article 1015(4)(c) of NAFTA, the Department award the contract to the complainant.

The Department decided not to implement the Tribunal's recommendation. However, it decided that it would reissue the procurement in order to clarify the requirements of the Request for Proposal and allow all bidders to have another opportunity to bid.

**Judicial Reviews of
Procurement
Decisions**

The Federal Court of Appeal dismissed an application by Corel Corporation to review a decision by the Tribunal in File No. PR-96-011. In dismissing the case the court said "that the Tribunal did not make any reviewable error in deciding as it did."

Two applications are currently before the Federal Court of Canada both relating to File No. PR-97-008, Symtron Systems Inc.

Table 2 lists the procurement decisions before the Federal Court during fiscal year 1997-98.

TABLE 1**Disposition of Procurement Complaints Between April 1, 1997, and March 31, 1998**

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-96-027	Philip Environmental	January 7, 1997	Decision issued April 10, 1997 Complaint valid
PR-96-030	Symtron Systems Inc.	February 24, 1997	Decision issued May 6, 1997 Complaint valid in part
PR-96-033	Versatech Products Inc.	February 27, 1997	Solved between parties
PR-96-034	Atlantic Safety Centre	March 4, 1997	Decision issued May 14, 1997 Complaint not valid
PR-96-035	Accutel Conferencing Systems Inc.	March 7, 1997	Decision issued June 5, 1997 Complaint valid
PR-96-036	Mirtech International Security Inc.	March 11, 1997	Decision issued June 3, 1997 Complaint not valid
PR-96-037	Sybase Canada Ltd.	March 11, 1997	Decision issued July 30, 1997 Complaint valid
PR-96-040	Hervé Pomerleau inc.	March 18, 1997	Decision issued May 9, 1997 Complaint not valid
PR-96-041	On Power Systems Inc.	March 19, 1997	Not accepted for inquiry/No valid basis
PR-97-001	ISS Integrated Security Solutions Inc.	April 3, 1997	Not accepted for inquiry/No valid basis
PR-97-002	H&R Consultants	April 4, 1997	Decision issued June 23, 1997 Complaint not valid
PR-97-003	Agra Monenco Inc.	April 9, 1997	Not accepted for inquiry/Lack of jurisdiction
PR-97-004	Excel Human Resources Inc.	April 18, 1997	Complaint withdrawn
PR-97-005	Hovey Manufacturing (Canada) Ltd.	April 28, 1997	Decision issued July 28, 1997 Complaint not valid
PR-97-006	Northern Micro Inc.	April 30, 1997	Decision issued July 29, 1997 Complaint valid
PR-97-007	Telesat Canada	June 6, 1997	Complaint withdrawn
PR-97-008	Symtron Systems Inc.	June 12, 1997	Decision issued September 10, 1997 Complaint valid
PR-97-009	DMR Consulting Group Inc.	June 20, 1997	Decision issued September 18, 1997 Complaint not valid
PR-97-010	Équipement Industriel Champion Inc.	June 27, 1997	Decision issued October 31, 1997 Complaint not valid
PR-97-011	Marathon Management Company, A Division of Marathon Watch Company Ltd.	June 26, 1997	Complaint withdrawn

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-97-012	Akweks Kowa Corp.	July 4, 1997	Not accepted for inquiry/Lack of jurisdiction
PR-97-013	Nanaimo Shipyard Ltd.	July 4, 1997	Complaint withdrawn
PR-97-014	AMCAN Technologies Incorporated	July 22, 1997	Not accepted for inquiry/Late filing
PR-97-015	Claude Néon Ltd.	August 4, 1997	Not accepted for inquiry/No valid basis
PR-97-016	S.C.S. Shielding Inc.	August 16, 1997	Abandoned while filing
PR-97-017	Micromass Canada Inc.	August 18, 1997	Not accepted for inquiry/Lack of jurisdiction
PR-97-018	Le Groupe Mentor Inc.	August 25, 1997	Not accepted for inquiry/No valid basis
PR-97-019	Array Systems Computing Inc.	August 29, 1997	Not accepted for inquiry/Late filing
PR-97-020	Océanide Inc.	September 9, 1997	Decision issued November 12, 1997 Complaint dismissed/ Lack of jurisdiction
PR-97-021	Canada Communication Group Inc.	September 12, 1997	Not accepted for inquiry/Lack of jurisdiction
PR-97-022	Tecmotiv (USA) Inc.	September 12, 1997	Not accepted for inquiry/No valid basis
PR-97-023	Trac Industries Ltd.	September 19, 1997	Decision issued November 27, 1997 Complaint dismissed/Lack of jurisdiction
PR-97-024	MIL Systems	September 26, 1997	Not accepted for inquiry/Late filing
PR-97-025	Harris Corporation	September 29, 1997	Order issued November 28, 1997 Complaint dismissed/Late filing
PR-97-026	Marchand Electrical Company Ltd.	October 10, 1997	Not accepted for inquiry/No valid basis
PR-97-027	NOTRA Environmental Services Inc.	October 16, 1997	Decision issued December 16, 1997 Complaint not valid
PR-97-028	C.A. Ventin Architect Ltd.	October 24, 1997	Decision issued January 16, 1998 Complaint not valid
PR-97-029	Hitachi Data Systems Inc.	November 4, 1997	Complaint withdrawn
PR-97-030	Amdahl Canada Limited	November 6, 1997	Complaint withdrawn
PR-97-031	Educom Training Systems Inc.	December 3, 1997	Not accepted for inquiry/Lack of jurisdiction
PR-97-032	Ébénisterie Alfredo Limitée	December 4, 1997	Complaint withdrawn
PR-97-033	IBM Canada Ltd.	December 11, 1997	Accepted for inquiry
PR-97-034	Wang Canada Limited	December 16, 1997	Decision issued March 11, 1998 Complaint valid
PR-97-035	Frontec Corporation	December 22, 1997	Accepted for inquiry

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-97-036	Novus Incorporated	December 29, 1997	Accepted for inquiry
PR-97-037	Tactical Technologies Inc.	December 31, 1997	Accepted for inquiry
PR-97-038	Oxfam Canada	January 13, 1998	Not accepted for inquiry/No valid basis
PR-97-039	Patton Aircraft & Industries Limited	January 19, 1998	Not accepted for inquiry/No valid basis
PR-97-040	Société de coopération pour le développement international	January 22, 1998	Accepted for inquiry
PR-97-041	Mirtech International Security Inc.	January 28, 1998	Accepted for inquiry
PR-97-042	Pacific Body Armour	February 2, 1998	Not accepted for inquiry/No valid basis
PR-97-043	AVSpex	February 3, 1998	Not accepted for inquiry/No valid basis
PR-97-044	Tactical Technologies Inc.	February 3, 1998	Not accepted for inquiry/Lack of jurisdiction
PR-97-045	Flo-lite Industries	February 6, 1998	Accepted for inquiry
PR-97-046	J.W. Electric & Controls	February 6, 1998	Abandoned while filing
PR-97-047	Valcom Ltd.	February 12, 1998	Accepted for inquiry
PR-97-048	Bell Canada	February 16, 1998	Complaint withdrawn
PR-97-049	Bell Canada	February 16, 1998	Complaint withdrawn
PR-97-050	Marcomm Incorporated	March 5, 1998	Not accepted for inquiry/No valid basis
PR-97-051	Safety Projects International Inc.	March 12, 1998	Accepted for inquiry
PR-97-052	PeopleSoft Canada Company Limited	March 16, 1998	Accepted for inquiry
PR-97-053	Accutel Conferencing Systems Inc.	March 19, 1998	Not accepted for inquiry/No valid basis
PR-97-054	Bell Canada	March 27, 1998	Accepted for inquiry

TABLE 2

Cases Before the Federal Court of Canada Between April 1, 1997, and March 31, 1998

File No.	Complainant	Appellant	File No./ Status
PR-96-011	Corel Corporation	Corel Corporation	A—1048—96 Application dismissed
PR-97-008	Symtron Systems Inc.	I.C.S. International Code Fire Services Inc.	A—700—97
PR-97-008	Symtron Systems Inc.	Attorney General of Canada	A—687—97

PUBLICATIONS

October 1997

Annual Report for the Fiscal Year Ending March 31, 1997

October 1996

Textile Reference Guide

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**New Brochure
and Information
Documents**

A brochure and a series of documents designed to inform the public of the work of the Tribunal are available. They include:

- *Introductory Guide on the Canadian International Trade Tribunal*
- *Information on Appeals from Customs, Excise and SIMA Decisions*
- *Information on Dumping and Subsidizing Inquiries and Reviews*
- *Information on Textile Tariff Investigations*
- *Information on Procurement Review*

Publications can be obtained by contacting the Secretary, Canadian International Trade Tribunal, Standard Life Centre, 333 Laurier Avenue West, Ottawa, Ontario K1A 0G7 (613) 993-3595 or they can be accessed on the Tribunal's Web site.

